ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1870.

WITH INDEX.

VOL. IX.

Published by the Authority of the Governor-General.

CALCUTTA:
OFFICE OF SUPERINTENDENT OF GOVERNMENT PRINTING.

1871.

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 7th January 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding*.

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

His Highness Sarámade Rájáháe Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble MR. COCKERELL took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

AGROR VALLEY BILL.

The Hon'ble MR. STEPHEN introduced the Bill to remove the Agror Valley from the jurisdiction of the tribunals established under the general Regulations and Acts. He said he did not think he need say more than a very few words on the subject, because the object of the Bill was simply to confirm an Ordinance which was fully considered some months ago by His Excellency the Governor General. The Ordinance was rendered necessary by the condition of the Valley at that time, and that condition still remained unaltered. It was hoped that the Bill introduced during the last session of Parliament would have invested the Governor General in Council with power to make laws, executively, for those parts of the empire which were in a wild and unsettled condition, and for which, practically, before 1862, the Governor General

legislated. This would have superseded the necessity of legislation by the Council. That Bill, however, as passed, did not make the anticipated provision. In fact, the Bill was hardly discussed at all: it was introduced at the very end of the session, and was reduced to the narrowest limits. The consequence was that it was necessary to legislate on the subject now before the Council in respect of the measures to be taken for the government of the Agror Valley. The territory was in an unsettled state, and it was necessary, for various reasons, to invest the authorities with unusual powers. The Bill was little but a transcript of the Ordinance, which had been carefully settled with the Government of the Panjáb, and had worked satisfactorily since its promulgation. There was therefore every presumption in favour of the policy of continuing the existing powers.

SUBORDINATE JUDGES AND MUNSIFS' BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to provide for the appointment of additional Subordinate Judges and Munsifs in the Presidency of Fort William.

QUARANTINE RULES' BILL.

The Hon'ble MR. CHAPMAN presented the Report of the Select Committee on the Bill to provide rules relating to quarantine.

The Council adjourned to Friday, the 14th January 1870.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 7th January 1870.

Office Supdt. Govt Printing.—No 6368 L. C.—12-1-70.—180

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 14th January 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáháe Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

The Hon'ble F. R. Cockerell.

QUARANTINE RULES BILL.

The Hon'ble MR. CHAPMAN moved that the Report of the Select Committee on the Bill to provide Rules relating to Quarantine be taken into consideration. He said that, when he introduced the Bill, he stated that it would provide for both inland and maritime quarantine. On further consideration, however, it had been found that, in order to secure effectual sanitary rules for the multitudes resorting to fairs and sacred places, it would be necessary to pass a far more comprehensive measure. Thus, it would not only be necessary to meet the case of places where infectious diseases prevailed, but also the case of places where there were grounds for apprehending an outbreak of such diseases. Above all, it would be necessary to authorize the levy of taxation to cover the expenditure on account of the medical and other arrangements that would have to be made. On these grounds, the Select Committee had come to the conclusion that it would be advisable to limit the Bill to seaports, leaving for further consideration, either by this Council or the

Councils of the several Local Governments, the question of inland quarantine. He believed that a law to regulate inland quarantine was greatly needed, and that it would be found to interpose an effectual barrier against the inroads of cholera. It was with extreme regret that the Select Committee found themselves obliged to confine the operation of the Bill to the establishment of a system of quarantine in the seaport towns; but the subject of inland quarantine would not be lost sight of.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN then moved that the Bill as amended be passed.

The Motion was put and agreed to.

SUBORDINATE JUDGES AND MUNSIFS BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to provide for the appointment of additional Subordinate Judges and Munsifs in the Presidency of Fort William be taken into consideration. In doing so he said that, in the opinion of the Select Committee, the provisions of the Bill as introduced were sufficient to attain its objects, and no alteration had therefore been recommended.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that the Bill be passed.

The Motion was put and agreed to.

COURT FEES BILL.

The Hon'ble MR. COCKERELL also presented the Report of the Select Committee on the Bill to provide for the better regulation of Court fees.

AGROR VALLEY BILL.

The Hon'ble MR. STEPHEN moved that the Bill to remove the Agror Valley from the jurisdiction of the tribunals established under the general Regulations and Acts be passed.

The Motion was put and agreed to.

HINDU WILLS BILL.

The Hon'ble MR. STEPHEN also presented the Report of the Select Committee on the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns.

HIGH COURTS (COSTS OF PETITIONS) BILL.

The Hon'ble MR. CHAPMAN introduced the Bill to enable the High Courts at the presidency towns to deal with costs of petitions for certain monies transferred to Government, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that the Bill would deter parties from making idle and unfounded applications, as it would enable the Courts at their discretion to saddle such parties with costs.

The Motion was put and agreed to.

FEMALE INFANTICIDE BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill for the prevention of female infanticide, said that the prevalence of female infanticide in many parts of India had long been a matter of unhappy notoriety. From time immemorial, this crime had been practised in many parts of India, and especially in the North of India, by many tribes of Rájputs. Although, speaking generally, it might be said that the crime was peculiar to the Rájputs, still this was not, strictly speaking, true; for there were other tribes of Hindús with whom the practice was common, and in some parts of the country female infanticide was practised even by some classes of Muhammadans. The first Englishman, he believed, who, he might say, discovered the existence of this horrible system of crime, was the well known Jonathan Duncan, who, after eighty years, was still remembered with respect and affection in the Benares District. In 1789, when he was Resident at Benares, he first made known the wide-spread prevalence of this crime among the Rájputs of the Benares Division, and he exerted his influence to the utmost to induce the people who practised it to abandon the commission of the crime. Two Regulations were passed not long afterwards specially directed against this crime, Regulation XXI of 1795 and Regulation III of 1804; but the measures taken under those Regulations practically had very little effect, and they certainly had led to no permanent result. For some forty years after those Regulations had been passed, almost nothing seemed to have been done on this side of India with the object of repressing the practice of infanticide. It was not till the year 1836, when Mr. Thomason was making a settlement of Azimgarh, that he discovered the prevalence of the crime in that district. This admirable man and wise statesman, to whom India owed, on many grounds, a deep debt of gratitude, was the first, in modern times, on this side of India, who directed his mind to the prevention of this crime. He found that it was commonly practised in the Azimgarh District by Rájputs on the borders of the Oudh terri-

tories, and he stated that, among a body of Rájputs numbering some 10,000, "not a single daughter was forthcoming." MR. STRACHEY was quoting from the excellent account of Indian Infanticide by the Revd. Cave Browne :—

"I do not think," Mr. Thomason wrote, "it is generally known that the horrible practice so extensively prevails even at our own doors. I myself discovered it accidently whilst engaged in revising the settlement of the pargana. In conversation with some of the zamíndárs, I happened to mention one of them as the son-in-law of another. The mistake raised a sarcastic laugh, which was explained by the brief exclamation of a bystander:—'Where will you find a daughter in Kooha?' Inquiry once roused, the truth was palpable. They freely admitted the practice themselves, and it was a matter of notoriety. These Rájputs," Mr. Thomason went on to say, "are a fine, manly, independent race of men. There are few whom I have seen of more prepossessing address. Their tribe have formed of old high alliances, and they have served on regal establishments. * * They pride themselves on giving their daughters in marriage only to the members of certain tribes on an equality with themselves or their superiors. Matches are difficult to be obtained, and attended with great expense, which they can ill bear, and are almost certain to cause the alienation of the whole, or a great part, of their hereditary lands. Hence the birth of a daughter is considered a most serious calamity, and the unfortunate infant is very seldom spared."

Mr. Montgomery, now Sir Robert Montgomery, was then an Assistant to Mr. Thomason. Shortly afterwards he became Magistrate of Allahabad, and he found that the crime prevailed also in that district to a terrible extent. Soon after similar investigation showed the extreme prevalence of the crime in the Northern parts of the Doáb. Mr. Unwin, the Magistrate and Collector of Mainpuri, was the first to bring the fact to light in that part of the country: he found in that district that, among the Chohán Rájputs, who were very numerous, there was hardly a single female child, young or old, forthcoming. In Etáwa, Mr. Monckton soon afterwards found the same, and Mr. Gubbins made the same discovery in Agra. The higher the rank of the family, the more commonly and the more systematically was the crime practised. Thus, Mr. Raikes, who was Magistrate and Collector of Mainpuri and who devoted himself most energetically and successfully to the suppression of the crime, in his work called "Notes on the North-Western-Provinces," wrote as follows :—

"There is at Mainpuri an old fortress, which looks far over the valley of the Eesun River. This has been for centuries the stronghold of the Rájá of Mainpuri Chohans, whose ancient blood, descending from the great Pirthá Ráj and the regal stem of Ním-rána, represents *la crême de la crême* of Rájput aristocracy. Here, when a son, a nephew, a grandson, was born to the reigning chief, the event was announced to the neighbouring city by the loud discharge of wall-pieces and matchlocks; but centuries had passed away, and no infant daughter had been known to smile within those walls."

Shortly afterwards the first Panjáb war occurred, and in 1846 the Jalandhar Doáb was annexed to the British territories. Lord Lawrence was Commissioner of the new Division, and he found this practice equally prevalent there. It was found, subsequently, that there were other tribes besides the Rájputs in the Panjáb, who commonly practised the same crime, especially the Bédis, a numerous and very influential class of Sikhs of a sacerdotal character, said to be descended from Guru Nának, the founder of the Sikh faith. From that time, the more enquiries were made, the more was the prevalence of this crime in Northern India established. In 1856 an officer was appointed to make special investigations into the facts in the Benares Division, and MR. STRACHEY would quote to the Council some of the facts discovered by Mr. Moore during his enquiries carried on at Benares. Similar facts were quite as true in many other parts of the North-Western Provinces, of Oudh and of the Panjáb. In the Benares Division, Mr. Moore personally visited and made most minute investigations into the facts in three hundred and eight villages in which he found reason to suspect that the crime prevailed. In sixty-two of these villages he found that there were no female children under the age of six years. In one sub-division of the district he visited thirty-eight villages, and in ten of them he found no girls at all. He found that marriages of girls were of very rare occurrence; in some villages there had not been any within the recollection of the present generation. In one village, in which there was not a single girl under six years and only two above that age, the Rájputs could give no account whatever with what tribes they intermarried, nor of the expenses attending marriages. In another village there, no girl had been married for twenty-five years. In another part of the Division, Mr. Moore found a community of Hárá Rájputs, inhabiting villages on the borders of Oudh, regarding whom he said—

"Not only are there no girls to be found in their houses now, but there never have been any, nor has such an event as the marriage of a daughter taken place for more than two hundred years. This is their own confession, nor have they the remotest idea as to what tribes their daughters would be married with, nor how much such a marriage would cost."

Whenever Mr. Moore went amongst these particular classes, he found the same results. In another group of thirty villages he found that, in twenty, the total number of female children under six years of age was only thirty-seven, while there were three hundred and thirty-nine boys of the same age: in eleven villages there were no girls at all, and no marriage of a girl had taken place within the recollection of the oldest inhabitant.

Shortly after these enquiries occurred the mutinies of 1857, and, as might have been expected, the whole subject was then for some time lost sight of. But

after the re-establishment of order the subject again attracted the attention of Government. In Oudh, in particular, it was found that the custom was terribly prevalent, and active measures were taken by Sir Charles Wingfield with the help of the taluqdárs to put a stop to the practice.

Although in many parts of the country, a great deal had undoubtedly been done to check the crime, MR. STRACHEY feared that there could be no question that it was really at the present time almost as prevalent as ever. Only a year ago a minute investigation was made by the orders of the Lieutenant Governor of the North-Western Provinces in the District of Basti by Mr. Hobart. He conducted his investigation with great care and judgment, and the conclusions to which he came were the same as those arrived at ten years previously by Mr. Moore, of which MR. STRACHEY had just given some account to the Council. For example, Mr. Hobart examined a group of ten villages inhabited by Rájputs, and in seven of them he found one hundred and four boys and only one girl, and the people admitted that, for the previous ten years, only one girl had been married. In another group of twenty-seven villages, he found, in twenty-three villages, two hundred and eighty-four boys, but only twenty-three girls, and in ten other villages he found that the marriage of a girl was an unknown ceremony. Again, there was another group of sixteen villages, in four of which no girls existed, and in nine other villages there were seventy-one boys and seven girls.

But MR. STRACHEY need not continue these terrible illustrations of the prevalence of this crime. The accounts that were given would seem absolutely incredible if they were vouched for on less unimpeachable authority.

The causes which had led to this terrible prevalence of female infanticide had already been generally indicated in the passage from Mr. Thomason's Report which MR. STRACHEY had read to the Council; but he would also read a passage from Mr. Raikes' book, which stated very plainly what the real causes of the crime were. Mr. Raikes, than whom there could be no higher authority, for he was one of the first and most successful of the officers who had endeavoured to contend against this crime, wrote as follows:—

"At the very root of the evil stands this principle—The Hindú disbelieves the purity of the sex; a daughter arrived at puberty *must*, he thinks, be married or be disgraced. When he seeks a husband for her, it *must* be in his own caste; but it *must* also be in a sub-division of that caste, higher, if possible, but at all events differing from, his own. To marry in one's own sub-division is impossible; such an union would be set down as incestuous. Disgrace is attached to marriages with men of inferior relative rank. 'The owner of a hyde of land, whether Sisodia, Ráhtor, or Chohán, would scorn the hand of a Járejá princess.' What then

is a Rájput father to do with his marriageable daughters? He must, it is clear, seek a husband for them in a rank equal to his own, or in a higher rank. But if his own sub-division be high, if he be a Chohán or a Ráhtor, he will not easily find such a son-in-law; or, if he do find him, will have to pay high in hard coin for blood and rank. And this is why a Rájput mourns when a daughter is born to him, and rejoices when he has a son. The one brings disgrace, anxiety, or at least heavy expense upon his house; the other increases his wealth and his dignity."

Thus this necessity of getting his daughter married to a man of at least the same class as himself, and if possible of a higher rank than himself, brought on the high caste Rájput something of personal degradation. The father of a married daughter came to be looked upon as inferior to her husband, and the very name of "father-in-law" had become one of the commonest terms of insult and reproach.

"A Rájput, of the present day," writes Mr. Raikes, "is subject to his son-in-law hand and foot, can refuse him nothing, and, without disgrace, cannot accept so much as a meal at his hands."

Although all this was not strictly true, except of some classes of Rájputs, still there could be no doubt that these feelings of family pride had been at the root of this great evil. It had followed as a natural consequence that the most extravagant and ruinous expenditure had been incurred by these people in the marriages of their daughters, and this had been admitted on all hands to be one of the greatest immediate causes of the crime. Marriage-expenses were frequently so enormous that the marriage of a daughter literally proved the permanent ruin of the family, and under these circumstances a Rájput preferred that his daughter should perish rather than that he should be placed under the necessity of incurring expense for her dower to an amount, than which if he gave less he would consider himself disgraced. But after all, the real great reason for the crime at the present moment might be considered to be custom—immemorial custom—which Manu declared must be looked upon "as transcendent law and the root of all piety." There could be no doubt that these people murdered their children from generation to generation mainly because their forefathers had done so before them, with hardly an idea that there was anything criminal in the practice.

As to the remedies to be applied to this great evil, there was fortunately no reason to doubt, because we had ample actual experience to show us how the crime could be dealt with. The measures that had been taken had been of two kinds. The first class of measures had been those which aimed at the removal of the causes which led to the commission of the crime, and especially to the prevention of extravagant expenditure on marriages. The second class of measures had been of a coercive and directly preventive character. The first sort of measures evidently must mainly depend on the action taken by the people them-

selves; the other class of measures on the action of the Government. There had been considerable success in some parts of the country in inducing the Rájputs themselves to agree to limit their marriage-expenses. Mr. Raikes was the first to initiate measures of this kind at Mainpuri; they were afterwards followed up on a great scale, and with very great success, in the Panjáb, under the orders of Lord Lawrence, Sir Robert Montgomery, Sir Donald Macleod and others, and also in Oudh and elsewhere, and, there could be no doubt, had been very useful. There was a strong sense among the people themselves of the extreme folly of spending all this money on marriages, and it had been proved by experience that, with a little help and pressure put on them by the officers of Government, they were often glad to limit these expenses. While MR. STRACHEY believed that measures of this character, which struck at the very root and causes of the evil, were of the utmost value and importance, he thought there could be no doubt that the measures which had been practically the most successful had been those of active though judicious prevention and coercion. The measures of this character on this side of India were, MR. STRACHEY believed, first adopted by Sir Robert Montgomery. They were followed up afterwards very actively by Mr. Unwin, Mr. Gubbins and others, in the North-Western Provinces, in the Panjáb, and in Oudh, and MR. STRACHEY might give illustrations of the great success of those measures by a few facts. In 1842, Mr. Raikes found that there was hardly a Rájput girl living in the District of Mainpuri. Nine years afterwards, in 1851, there were one thousand four hundred and eighty-eight girls found alive, and, in 1855, the number had risen to two thousand five hundred and thirty. Similar results had been observed in the Agra District. The measures taken by Mr. Gubbins led, in a very few years, to the doubling of the number of female Rájput children; the same had happened in the Panjáb and Oudh, and indeed everywhere where preventive measures had been taken. These measures had been of a very simple character. They had consisted mainly, in the first place, in the introduction of an effective system of registration of births and deaths in suspected localities, and in a constant system of periodical inspection and enumeration of children. It had been found, in practice, that these measures had the effect of saving the lives of a large number of children when they were born. If a child was not killed immediately after birth, it might be considered safe; and it might be confidently said that experience had proved in a most unmistakeable way, that it was quite in the power of the Government of India to eradicate, or at any rate enormously to diminish, this crime. But the authorities in all parts of the country where the crime was practised had come to the most decided conclusion that it was necessary that measures for the prevention of the crime should be taken much more systematically and continuously than any that had hitherto been attempted, and to enable them to carry out completely the measures that were

necessary, legislation was absolutely required. It had been acknowledged on all hands that the existing law was altogether insufficient.

MR. STRACHEY said that he could not now enter into details regarding the Bill which he proposed to introduce; that would be done more properly hereafter. It was sufficient now to say that the Bill proposed little more than to give to the Local Governments legal authority to do, completely and systematically, that which had already been imperfectly done in many parts of the country. There was no real novelty in what was now proposed. The Bill had been already sent to the several Local Governments and Administrations, and in all substantial respects it had been entirely approved by them. He thought that the Council would agree with him when he said that a stronger case for legislation could hardly be imagined. The British Government had borne too long with this abomination, and he hoped that the time had come in which the Government would show to the world that it had finally and firmly resolved that these things should cease. He could not, for his part, doubt that it was in the power of the Government to bring about this end. Some people had talked of the political danger of rudely interfering with these atrocious practices. For his own part, MR. STRACHEY was quite confident that there was no danger of the kind. We were told the same thing when suttee was prohibited, and there were not wanting people to tell us the same at every such step that was made for the moral improvement and enlightenment of the people of this country. This talk of political danger was baseless and foolish, but he would say, for his part, that even if it were true that such danger existed, that was no reason for allowing such abominations as this to continue. Whatever might be the consequences, it was the duty of the British Government to declare that it would not suffer any longer the continuance of these horrible practices in any part of its dominions, and that it would put forth the whole of its power for their repression.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain monies transferred to Government—The Hon'ble Messrs. Stephen, Gordon Forbes and Cockerell and the Mover.

The Council adjourned to Friday, the 21st January 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 14th January 1870.

Office Supdt. Govt. Printing.—No. 6056 L. C.—20-1-70.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 21st January 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

HINDU WILLS BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns be taken into consideration. He said—" My Lord, my hon'ble friend Mr. Cockerell proposes to move, as an amendment, that this Bill be referred back to the Select Committee with instructions to report again in six weeks. I shall have no objection whatever to agree to that course, because the Select Committee has made a very important alteration in the draft of the Bill introduced to the Council some time ago, by proposing that that section of the Indian Succession Act, which refers to perpetuities, be extended to the wills affected by the Bill. I understand, also, that the Hon'ble Mr. Cockerell wishes that the Bill should be extended to the wills of the whole Hindú population of Lower Bengal. These two proposed alterations undoubtedly require careful consideration. I have therefore no objection to agree that the Bill should be referred back to the Select Committee, and that they should be instructed to report in six weeks. At the same time, I hope that I shall not be wasting the public time by making a state-

ment in the Council with respect to the character of the Bill in some particulars, and more especially with regard to the alterations now suggested. I do so in the hope that, in the course of the six weeks during which the Bill will undergo further consideration at the hands of the Select Committee, public attention may be directed to the real points at issue; and that the motives which actuated both the original draftsmen and the Committee in bringing the Bill into its present shape, may be properly appreciated. I shall therefore say a few words on the different provisions of the Bill, and enter somewhat more fully into the reasons of the Committee with regard to the clause regarding perpetuities. After the circulation of the Statement of Objects and Reasons, and the statement made by the Hon'ble Mr. Cockerell on a former occasion, I may pass rapidly over the general features of the Bill. I wish, however, to say, that one principle has been recognized throughout every part of this measure. That principle is to combine the utmost possible respect for Native opinions and institutions, with a gradual improvement of those institutions, and their adaptation to changing circumstances.

In the first place, I may say a few words about the history of the measure. A paper was circulated, requesting the opinions of persons well acquainted with the subject, so far back as the year 1865, almost immediately after the passing of the Indian Succession Act. The answers to that paper are most interesting, and peculiar interest attaches to the Native opinions, many of which are very able. One point on which these answers threw light, was the importance of not extending the provisions of the Succession Act to Muhammadans, and this has been recognized in the original draft of the present Bill. The Muhammadans possess an elaborate légal system of their own upon the subject of wills. It is closely connected with all their customs and with their religious belief, and it would be improper to disturb it. An excellent detailed statement of the differences between the Muhammadan law and the Indian Succession Act upon this subject has been supplied by a former Muhammadan Law Officer in the North-West Provinces. It is printed at length at pp. 48—57 of the collection of papers. On the whole, speaking of the contents of the papers generally, I may say that, though the Native gentlemen consulted made some objections to what they supposed to be the purport of the proposed measure, objections which were obviated by the provisoes which have been introduced into it, the papers show that they received the main provisions of the Bill with satisfaction. I will read, as an illustration of this, a few observations made on the Bill by the Rájá of Benares. After quoting some authorities, the Rájá observes—

At all events, the written will has now come into use, and the reason is that the people have become gradually impressed with the idea that property, whether personal or real, is,

without a written will, liable to injury, and that the disputes of relations burden the estate or property with heavy law-expenses, by which it is eventually ruined and lost.

It being, therefore, apparent that the Natives have followed the example of the English in this respect, and that written wills are being generally adopted, it is expedient to prescribe rules for their execution.

The objections to, and defects in, nuncupative wills, alluded to in the confidential letter of Government, are with few exceptions just and valid. No definite limits can be assigned to nuncupative wills, and although the High Courts of Calcutta, Madras and Bombay admit the legality of nuncupative wills by Hindús, yet the times and the condition and character of the people render the execution of written wills preferable.'

I come now to the objections raised against the measure. They can all be brought under the four following heads:—*First*, that the Bill would interfere with the Native Law of Succession; *secondly*, that it would interfere with the Native Law of Marriage; *thirdly*, that it would interfere with the right to leave property for the purpose of a religious endowment; and, *fourthly*, that it would interfere with the supposed right of Hindús to create a perpetuity. Of these four objections, the first is met by the proviso that nothing contained in the Bill shall enable a testator to bequeath anything which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance which they would have possessed if he had died intestate, and by the omission of certain Parts of the Succession Act, to which I shall refer in their place. The second is met by the proviso that marriage, in the case of Hindú wills, shall not operate as a revocation. The third is met by the omission from the Bill of the 105th section of the Indian Succession Act. The fourth objection proceeds, as I shall show at length, upon a misconception of the Hindú law.

When the effect of the provisoes referred to is considered in connection with the omission from the present Bill of certain Parts of the Indian Succession Act, it becomes apparent that the result of the whole measure will be to preserve to the Hindús the full benefit of every part of their present Law of Inheritance. In order to set this in a clear light, I will go through the provisions of the Bill, and show how they bear upon the subject when taken in connection with the provisoes.

The general object of the Bill is to apply to the wills of Hindús such Parts of the Indian Succession Act as are adapted to their circumstances. I will now point out specifically which Parts of that Act are, and which are not, regarded by us in that light. The first six Parts of the Act relate to domicile, consanguinity, intestacy, the distribution of intestate property, and the effect of

marriage. No part of these provisions would apply to Hindús : to apply them would be to produce a total revolution in the Hindú Law of Succession and Inheritance, and they have accordingly been omitted. The seventh Part of the Act is general, and begins with the forty-seventh section, which is in these words—'Every person of sound mind and not a minor may dispose of his property by will.' This, standing alone, would no doubt affect considerably the Hindú Law of Inheritance, but it must be taken in connection with the proviso to which I have already referred,—that nothing contained in the Bill shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance which they would have possessed if he had died intestate. The effect of section 47, qualified by this proviso, will be that Hindús within the local limits of the Bill will be able to dispose by will of such property as Hindú law permits them to dispose of by deed *inter vivos*, and that their testamentary power will be limited by such rights of maintenance as Hindú law confers upon their families at present. Nothing else in the application of this part of the Act requires notice till we come to Part IX, which relates to the wills of soldiers and sailors on active service. By the Indian Succession Act as well as by the Law of England, such wills may be nuncupative. This Part is not applied to Hindú wills, because the wording of section 50 renders it unnecessary to do so. That section runs thus—'every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his will in the following manner.' Therefore, if the Hindú testator is a soldier or sailor on active service, section 50 does not apply to him, and he is still at liberty to make a nuncupative will according to the present Hindú law. The tenth Part of the Act, with regard to attestation, revocation, alteration and revival of wills, requires no notice.

The Parts (XI to XXVIII, both inclusive), which relate to the construction of wills, may require a few words. They consist mainly of provisions which can in no way whatever affect any rights of inheritance. They are merely directions for the guidance of the Judges in settling cases, which, as experience shows, constantly arise as to the meaning of a testator's words. They are of universal application, and will be found of great convenience to all persons having to interpret wills, and, as to most of these rules, I cannot conceive how they should be opposed to Native ideas. There are, however, some of them of which this cannot be said. They are contained in sections 78, 79, 80, 81, 84, 86 and 87, and arise principally out of certain technicalities of English law. I need not trouble the Council even with a slight sketch of these, but any one who possesses any acquaintance with English Real Property Law must be aware that

such words as 'heir,' 'right heir,' 'children,' 'issue' are dangerous in the extreme, and that, if used without the greatest care and the best possible advice, they are nearly sure to produce litigation. This arises, not from the nature of things, but from peculiarities in the English law, especially in the English Law of Real Property, which have nothing to do with the wills of Hindús. The rules relating to the interpretation of such expressions have accordingly been omitted from the Bill. I pass over, for the present, the section relating to perpetuities, which occurs in this part of the Succession Act, and I come to Part XXVIII, relating to what is called in English law the *Donatio mortis causá.* We have omitted to extend this Part, first, because it has nothing to do with wills, and, secondly, because we do not wish to interfere with the rules of Hindú law in regard to gifts.

The next part of the Succession Act which is applied to Hindú wills is that which relates to executors and administrators with a will annexed. It consists of Parts XXIX, XXX, XXXI and XXXIII to XXXIX, both inclusive. The matters to which these Parts relate are most important, and the change which we propose to effect by applying them to Hindú wills will, I hope, be found most beneficial. Speaking generally, the object of the Bill is to give to Hindús the benefit of definite rules with regard to the duties and position of executors and of administrators with a will annexed; but we have been exceedingly cautious to leave out every section the effect of which would be to vary the course of inheritance. We have effected this object in the following manner:—

By section 179 it is provided that the executor or administrator of a deceased person is his legal representative, and all the property of the deceased person vests in him as such. This would have altered the Hindú law, if we had not qualified it by the proviso that nothing shall vest in the executor or administrator with the will annexed of a deceased person which such person could not have alienated *inter vivos.*

Again, sections 200—207 provide in substance that, if a man dies intestate, administration is to be granted to his next of kin in the order stated in other parts of the Succession Act. If these sections had been applied to Hindús, they would have altered the present practice of granting administration. We have accordingly abstained from extending them. On the other hand, by sections 195, 198, 230 and 231 (which are extended to Hindú wills), administration with the will annexed must be granted to the person who would be entitled to administer in case of intestacy, and we have taken care to add words to those sections to show that we mean the person now entitled, without reference to our Bill or to the

Succession Act. The Court will have to be guided in such cases by the Hindú law. In the language of our Courts, the grant will follow the interest; that is, the letters will be granted to the person or persons who, according to Hindú, Jaina, Sikh, or Buddhist law (as the case may be) are entitled to succeed to the estate of the deceased, or in the case of an undivided Hindú family, to the managing member of the family. These arrangements in my judgment effectually protect the Native Laws of Inheritance from any alteration by this part of the Act. I hope that, with these precautions, this part of the Act will prove to be highly beneficial. It will for the first time define clearly the position and powers of a Hindú executor or administrator, and provide him with distinct and authoritative guidance in the discharge of his duties. This is highly important; for, as matters stand, the position of a Hindú executor is difficult to comprehend. A Hindú will itself is a matter of comparatively modern growth, and a Hindú executor is in a condition even more embryonic than that of a Hindú will. He is at present rather a manager than an executor; but by these provisions he will be placed in very much the same position as an English executor, though the substance of his duties will be regulated by Hindú law.

One or two other provisions of small importance have been omitted. For instance, we do not apply to Hindú executors the provisions relating to executors of their own wrong.

I now come to a matter in which a substantial alteration has been made in the Bill by the Select Committee,—that is, the question of perpetuities. The section which we propose to introduce is this—

'101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.'

That is substantially the rule of the English law, and the Committee propose that it should be applied to Hindú wills. It has been said that this is an alteration in the Hindú Law of Inheritance. I have studied the matter as carefully as I could, and after considerable trouble and consideration I have arrived at the conclusion that it would be difficult to imagine a more total and complete mistake. I am indeed disposed to doubt whether those who make such an objection know what a perpetuity means. If they did, they would see that the power to create a perpetuity, as we understand it, is diametrically opposed to the whole spirit and character of the Hindú law. It may be necessary for public information to say, in a few words, what I understand by this power. It is, in sub-

stance, a power of posthumous legislation for an indefinite period, by which the testator or settlor is enabled to restrain the alienation, and to suspend the possession and enjoyment, of property for such time as he chooses—a power to lock up land and capital for ever, to prevent the free circulation of property, to check the improvement of land, to render its acquisition impossible. The possession of this power has, by a strange peculiarity, by a sort of disease of the human imagination, been ardently desired by a certain number of persons in all countries and at all times. People seem to suppose that they can perpetuate their own enjoyment of property by interfering with other people's enjoyment of it after they are dead and gone. They seem to think that a man can extend his own life by doing something which, hundreds of years after his death, will affect the lives of other people. This delusion invariably springs up in men's minds when the power of making wills is conceded to them. It exists to this day both in England and in India, and has shewn, as it is still showing, itself in the most absurd and mischievous testamentary dispositions. The object sometimes is, as in Mr. Thellusson's case, to accumulate enormous sums of money for the benefit of some distant descendant. In other instances testators have attempted to regulate the succession to property in a manner totally unknown to the law, and others have attached childish and ludicrous conditions to the enjoyment of their property. One man provided that certain furniture should never be taken out of his house during the term of several lives in being, and for twenty-one years afterwards, and had he had power to extend these conditions over many centuries, he would no doubt have done so. That a wish of this kind exists, not only in England but also in Bengal, and that it exists at present as strongly as ever, is proved by a case decided lately—the case of *Kumara Asima Krishna Deb* (Appellant) v. *Kumara Kumara Krishna Deb* (Respondent). The testator in that case provided by his will for the accumulation of his property for ninety-nine years at least, and probably for a much longer period. That is an example of what is meant by the system of perpetuities, and I assert that it is sanctioned neither by the Hindú nor by the English Law, nor by any system whatever, which is based upon common sense even in a small degree. I will add that, under every system of law with which I am acquainted, it has been found necessary to devise means to restrain persons from putting into effect these extravagant and mischievous notions of their testamentary powers.

It is by no means easy to see how the opinion that the Hindú law authorizes the creation or existence of perpetuities ever arose. I asked myself this question when I entered upon the consideration of the subject, and the more I studied it the greater became my difficulty; because it was perfectly

clear that, if any law could be opposed to the system of perpetuities, that law was the law of the Hindús; and this I will endeavour to show in a few words. There are two modes in which the devolution of property may be regulated. It may be regulated, either by the provisions of the law as to its descent, or by will. So far as it is regulated by law, it cannot be regulated by will, and so far as it can be regulated by will, it is not regulated by law. In proportion, therefore, as the law of any country regulates the devolution of property, to that extent it excludes testamentary power; and the more any given system recognizes the principle of permanence, the more alien to that system would be the principle of testamentary perpetuities as I have described it. In England a very wide latitude is permitted to the testamentary power. In France hardly any latitude at all is permitted. The French law declares that the whole of a man's property shall descend to his children equally, with certain exceptions. It therefore excludes the power of creating perpetuities by will, and consequently the power of creating perpetuities is more alien to the law of France than to the law of England. I now proceed to consider how the law of Hindústán stands with respect to the power of creating perpetuities by will, and I assert that no imaginable system of law could be more fundamentally opposed to them; for it is a system so unfavourable to testamentary power of any kind at all, that wills themselves are unknown, or all but unknown, under it; and that, in the greater part of the country, the owner, or rather the possessor, of property, is not only unable to leave it by will, but is unable to alienate it *inter vivos*, except with the consent of his sons. The Hindú law upon this subject differs in different parts of the country. It is contained, as is well known, in several authoritative works, the authority of which applies to different districts. The Mitákshará is the great authority for all the schools of law except for that of Bengal, and might perhaps be described as the common-law of Hindústán; though the phrase must not be pressed as it is liable to abuse. There is also the Dáyabhága, which prevails in Bengal, the Vyavahára Mayúkha in Bombay, and there are other authorities which prevail in Madras and other parts of the country. The general scheme of the Hindú law is, that a man's property is to descend to his family. It is indeed hardly an exaggeration to say that the family, and not any one living man, owns the property, and that the father is more in the position of a manager than in that of a proprietor, as appears from the whole purport of the law of partition, the distinction between ancestral and self-acquired property, and the rules which pervade the whole subject as to divided and undivided families. Such being the state of the Hindú law, is it possible to imagine anything more diametrically opposed to the testamentary power, and still more to the power to create a perpetuity by will, which must, by the nature of the case, derogate from the most essential

provisions of the Hindú law ? What can be more opposed to the spirit of the Hindú law than that a man who cannot alienate his ancestral immoveable property without the consent of his sons, grandsons and great grandsons (if he has them), should be able to leave it by will to a stranger for life, and to entail it for ever upon one particular line of that stranger's descendants .

This being the state of things, it is a curious question how the notion that testamentary perpetuities formed a part of Hindú law can ever have grown up ? As I am most anxious to vindicate fully the course which the Committee have taken, I will try to answer this question, though it will involve a somewhat technical statement. Whatever the precise origin of Hindú wills may have been, it is an admitted fact that they are of very modern origin. My own opinion is, that they came into use after the establishment of British rule in Hindústán, that they grew up by degrees, and that a certain number of obscure texts in Hindú law-books, which in fact apply to a different subject, were used for the purpose of sanctioning their introduction after the practice had been introduced. My opinion on such a subject is of course of little value ; but as far as I can judge I should say that the native texts in question apply, not to the power of making wills, but to the power on the part of a father to make dispositions of his property to take effect after his death, which gifts, when once made, were irrevocable. Now the essence of a will is, that it is ambulatory ; that is, that it is revocable until the moment of death, and becomes irrevocable only upon the death of the testator.

The documents which are now described as Hindú wills antecedent to the establishment of the English power were in fact, as I believe, irrevocable gifts made during the lifetime of the testator. I ought however to add that, in Lower Bengal, where the Dáyabhága prevails, the legal right of alienation on the part of the head of a family has been established, though, in the absence of his sons' concurrence, it is reprobated as immoral. The effect of this would no doubt be to suggest the idea of alienation by will, and to dispose people to find authorities for that practice, when once introduced, which in point of fact have nothing to do with it. Be this how it may, there is no doubt that the power of making wills has been well established in Bengal ever since the famous Nuddea case, which was decided early in the present century. What might have been expected followed. When the Natives of Bengal began to make wills, they soon began to wish to create perpetuities ; and inasmuch as wills had been unknown to the early Hindú laws, those laws contained no rules against perpetuities ; hence they argued that they had the right to create perpetuities. No argument could be more absurd. It might be stated thus :—because it was till very lately questionable whether we had the power to make a will at all, therefore we have now an amount of testamentary power

which no other nation ever possessed. This was fully recognized by the Courts of justice which had to decide upon particular cases; but there is some real and more apparent confusion and indistinctness in the way in which they dealt with the subject; and in order to state precisely the existing state of the law it will be necessary to enter into a certain amount of technical detail. In 1859, a case came before the Privy Council. It was the case of *Sonatun Bysakh* v. *Sreemutty Juggutsoondree Dossee* (8 Moore I. A. C. 66). In that case an attempt was made to create a perpetuity, and the Supreme Court at Fort William had laid down the law upon the subject in the following words, p. 78:—

'If the question were untouched by authority, we should be of opinion that the testamentary power engrafted upon the general Hindú law by the custom of Bengal, which has been recognized and established by repeated decisions, must be taken to exist, subject to those restraints which the general policy of the law imposes on the exercise of testamentary power in general; and in particular, that it cannot enable a Hindú testator to alter, perpetually, the legal course of succession to his property by making it pass for all time to those who, taking not as legal, but as substituted, heirs would, according to our phrase, take, not by descent, but by purchase. But in truth we are bound to hold this, unless we are prepared to overrule the decision of the Court when presided over by the late Chief Justice in *Luckunchunder Seal* v. *Koroonamoney Dossee*, Boulnois' Reports, 210. Therefore, some time before 1859, the Supreme Court ruled against the doctrine of perpetuities. The Privy Council, in their judgment in that case, passed over the subject of perpetuities; but they varied the decision of the Supreme Court on other grounds, and the effect of that was, that it seemed doubtful whether the ruling of the Supreme Court as to perpetuities was correct. That doubt would appear to have been considerable, inasmuch as a case (*Ramdhone Ghose* v. *Annundchunder Ghose*, 2 Hyde, 93) was decided in the year 1864, by Mr. Justice Levinge, in which he not only held that a devise creating a perpetuity was valid, but referred, as the ground of his decision, to certain remarks made by Sir Barnes Peacock in a case (*Goberdhun Bysack* v. *Shamchund Bysack*) decided by him some time before and now reported in Bourke, 282. The effect of this decision, so far as it went, was to prove that perpetuities were valid according to Hindú law. However, the subject again came up for decision in a later case (reported in 2 Bengal Law Reports, O. C. J. 11), and with reference to a will which attempted to create a perpetuity for ninety-nine years. In that case, Sir Barnes Peacock strongly pronounced against the power of creating a perpetuity. I shall not give the very words used by Sir Barnes Peacock on these occasions, because to do so would occupy too much time, and require the statement of too many facts of no general interest; but

the substance of his explanation of the apparent inconsistency between his two judgments was, as I understand it, as follows—'I said then, and say now, not that by Hindú law perpetuities were good, but that the remedies against perpetuities adopted by English law did not apply to Hindús,' which was quite a different proposition. At all events, in the second case, he expressly laid down, in the clearest way, that perpetuities were not only not valid by the law of the Hindús, but were on the contrary opposed to the whole spirit of the Hindú law. Besides these cases, certain expressions fell from the Judicial Committee of the Privy Council, in giving judgment in another case (*Sreemutty Soorjeemoney Dossee* v. *Denobundoo Mullick*, 9 Moore, I. A. C. 123) which I could imagine might favour the notion that perpetuities were valid by the Hindú law. Lord Justice Knight Bruce said—'We are to say whether there is anything against public convenience, anything generally mischievous, or anything against the general principles of Hindú law, in allowing a testator to give property, whether by way of remainder, or by way of executory bequest (to borrow terms from the law of England) upon an event which is to happen, if at all, immediately on the close of a life in being. Their Lordships think that there is not.'

Now those words 'remainder' and 'executory bequest' are words with regard to which there is a very long history, and a person who reads the judgment quoted carelessly, or with a strong wish in his mind to find in it an authority for perpetuities, might perhaps argue that the Court meant to say that the Law of Remainders and Executory Devises, as it exists in England, is in force in Hindústán without the restrictions to which they are subjected in England, and of which the judgment says nothing. That is not, as I need hardly say, the true construction of the judgment; but it is a construction which might be put upon it by a prejudiced mind. This, however, is more or less speculative; but whatever may have been the particular phrases or cases which gave rise to the notion of the legality of perpetuities, I do not think I can be wrong in saying, in general, that it was due to a want of perception of the leading idea which runs through all these cases, which is this:—The Judges were anxious, from first to last, to condemn perpetuities on the one hand, without introducing, on the other, the remedies against them provided by the English Law of Real Property; and the language which they employed for the second purpose may have appeared, or may even have been, to some extent, inconsistent with that which they used for the first purpose. I do not think, however, they should be blamed for an anxiety which may have led them a little astray in their language in one or two instances; for the introduction of the English Law of Real Property into this country would be a worse remedy than the disease. The difference between the laws of the two countries is this:—In India, wills and perpetuities alike were altogether unknown until quite lately, and the absence of express rules against perpetuities arose from the

absence of any law about wills. In England, both wills and perpetuities are comparatively ancient, and the safeguards provided by the judges and the legislature against the abuse of the one, by the introduction of the other, are to the last degree intricate and technical. I need not trouble the Council with a history of them; but by way of giving a faint notion of what India has escaped by the refusal of the Courts to introduce them, I may mention in a very few words the leading points of that history. It begins with the Statute *De donis* (13 Edw. I). It goes on to the invention of fines and common recoveries. Its next stage is the Statute of Uses. Then we come to the rule in Shelley's case; the *Scintilla Juris*; the learning of contingent remainders; shifting and springing uses, and executory devises; the doctrine of powers, which cannot be understood without a full appreciation of the nature of estates and tenures and of the distinction between law and equity; and many other matters which I do not at this moment remember, and of which it would not interest you, My Lord, to hear. The result no doubt is, that the English law has settled down into a definite form. But those who argue that, because these doctrines—intricate, complicated, all but unintelligible as they are—do not apply to the wills of Hindús, therefore perpetuities do exist by the law of Hindústán, argue as absurdly as if they said that a man does not recognize a painful disease as such, because he is not prepared to undergo, for its cure, some strange series of intricate operations which happen to have been inflicted centuries ago on another patient of a totally different constitution. The conclusion from all this is, that the Hindú law does not sanction perpetuities, and that its spirit and temper are entirely alien to them.

As I wish to put this matter beyond dispute, I may add that the same proposition may be collected from the judgments of Chief Justice Scotland in the case of *Arumugam Mudali* v. *Ammi Ammál*, 1 Madras High Court Reports, 400, and of Mr. Justice Macpherson in the recent case of *Sreemutty Kistomoney Dossee* v. *Anund Krishna Bose*, and that it is assumed on appeal by the Judges in the late case of *Tagore* v. *Tagore* as one of the grounds of their decision, although the case did not expressly turn upon it.

We now come to the question of legislation. The long review of decided cases which I have been obliged to give, proves clearly that legislation is necessary. If we do not legislate, the courts of justice will; and inasmuch as they will have to legislate *ex post facto* on each particular case as it arises, and no further than that case will warrant, it is probable that, if the matter is left to them, we shall get, at an immense expense to litigants, and after the lapse of generations, a system as complicated as that of the English Real Property Law. We must therefore lay down some rules. What are they to be? Our answer is, the 101st section of the Succession Act. Apply those three lines to Hindú

wills, and you settle the question. If we do not do that, we must make perpetuities legal by express words, and I think no one would propose so monstrous a system. The reason on which the rules of the Succession Act are founded is obvious enough. They enable a person to provide for all contingencies as to which ordinary human prudence can form reasonable anticipations. The owner for the time being can say to a particular man—'I think you should have a life-estate in my property, and after that it shall go to your son, then living, when he attains his majority.' Such a period is one over which a man's interest in the affairs of the world would naturally extend, and as to which he can form rational anticipations. To enable a man to legislate as to the employment of what once was his, centuries after his death, is to sacrifice the living to the dead for no other purpose than that of gratifying a diseased and mischievous appetite.

I now come to a very important matter, which, however, may be very briefly dismissed. This is the omission from the Bill of section 105 of the Succession Act, which relates to religious endowments. With regard to this, a very strong expression of opinion has been given by many of the Native gentlemen who were consulted. The Committee have thought it best to permit the existing state of things to continue, and not to interfere in a matter which affects native religious feelings, and as to which we are not the best judges. Lastly, there is section 104 of the Act, which it is proposed to leave out of the Bill; it is a section relating to accumulations. It prevents accumulations of income for a longer term than one year. In England, accumulations are permitted for twenty-one years, and I could mention many purposes for which that period is not excessive. I must add that I do not understand on what grounds accumulations were restricted to one year by the Succession Act. Whatever the reason may have been, the Committee have thought it best not to apply this provision to the wills of Hindús, but to leave the matter as it stands.

I have thought it right to make these observations on the Bill, because it is one which has attracted considerable attention amongst the Native community, and because it involves what every one must allow to be a matter of the most essential importance, namely, the charge against Government of having wished to interfere with those Native feelings and institutions which we are bound to respect. I have thought it necessary to refute that charge as strongly and fully as I could, and to show that, on the contrary, the most scrupulous attention has been paid to the opinion of the Natives; that is my excuse for taking up so much of the time of the Council.

With regard to the proposal that the Bill should extend beyond the Presidency Towns, I think that that question can be considered when the Hon'ble Mr. Cockerell brings forward his motion."

The Hon'ble Mr. Cockerell thought that, looking to the important character of the alteration which this Bill had already undergone in Committee, there was certainly some advantage in allowing some further time to elapse ere we proceeded to confirm the measure and render it irrevocable by passing the Bill in its amended form. For it must be borne in mind that there was this important difference between the Bill as introduced, and as it came up from Committee, that whilst, in the one case, its provisions did not, as so minutely explained by his Hon'ble and learned friend (the mover), overstep in any single matter the limits within which its scope and object had been entirely approved by the many intelligent Native gentlemen who were consulted on the subject, in the other, a certain degree of restraint on the free action of the testator was contemplated, which, in some quarters at least, had been represented to be repugnant to the feelings of the people of this country.

For his own part he entertained no doubt as to the expediency of the addition to the Bill of those sections of the Indian Succession Act which comprised the rule against perpetuities; but after the very forcible justification of the action taken in this matter by the Select Committee, which they had just heard from his Hon'ble and learned friend, he should be unnecessarily taking up the time of the Council if he were to dwell further on this subject. He would merely add that he thought no one who had marked the various decisions of their Courts in Will cases during late years, and more especially the decisions regarding the will of their former colleague, the late Bábu Prasanna Kumár Thákur, could come to any other conclusion than that the time had arrived for the interposition of the legislature for the purpose of placing some restraint on the abuse, by the Hindú testator, of his testamentary powers, and removing the uncertainty which now prevailed as to the extent to which such testator might controul the devolution of his estate: the only point which could be said to have been clearly established hitherto was that the creation of perpetuities was not only supported by no express authority of Hindú law, but was even alien to its principles.

The amendment which he was about to move, however, rested on other grounds. He was strongly of opinion that the proposed local limits of its operation were unnecessarily and even unreasonably restricted. The principle of the Bill was that a Hindú proprietor's legal power of disposing of his property by will being an established fact, it was expedient to secure the effectual exercise of that power by such safeguards as experience had shown to be necessary in countries where the devolution of property was largely influenced by the practice of testation. And the natural corollary to this

proposition was that the application of those safeguards should follow the prevalence of the practice. If then it was a fact that the exercise of the testamentary power was confined to persons residing within the Presidency Towns, the Bill, as it stood, would provide all that was desirable in the way of present legislation. But had they any good grounds for the assumption on which the present limitation of the Bill avowedly rested?

It should be remembered that the Courts had established, by a long train of decisions, that the testamentary power of disposition of their property amongst Hindús was co-extensive with their rights of alienation of such property by gift or sale; that this conclusion was now universally accepted, and was, in fact, the basis of the proposed legislation. Such being the case, they would naturally expect to find the prevalence of the practice of testation in proportion to the area of the testamentary power; and, consequently, greater in Lower Bengal—where, under the tenets of the Dáyabhága interpretation of the sástras, the dominion of the Hindú over every description of property vested in him was absolute—than in other parts of India (not excepting the Presidency Towns of Madras and Bombay which were included in the Bill) in which the proprietor's rights were far more limited. This expectation seemed to be justified by such facts as were within their reach. As regarded nuncupative wills, they had the evidence of the Judges of their Courts, and of those Native gentlemen who had been consulted in the matter, that such wills were not unfrequent in Bengal; and, as to written wills, they had the clear evidence of the records of the registration-offices that, in Lower Bengal, the practice of testation was by no means confined to Calcutta. He found from the records of the registration-offices in Lower Bengal that, in the year 1867-68, about four hundred wills were registered, of which fifty-four only were registered in Calcutta.

In the year 1868-69, out of a total number of five hundred registrations of wills in the Lower Provinces of Bengal, about seventy-nine were effected at the Calcutta office. The registration of wills was not compulsory, and therefore the number of wills registered did not of course represent the number of wills executed; but the statistics which he had just cited might be fairly held to indicate the relative extent to which the testamentary power of disposition of property was exercised by the Hindú owner of property residing within Calcutta and such owner in other parts of Lower Bengal. And the reasonable conclusion was that not only was the practice of testation in Bengal Proper unrestricted to the inhabitants of the Presidency Towns, but that—having regard to the relative numbers of the Mofussil and town population

possessing property which could be disposed of by will—the practice of testation was scarcely less common amongst the former than the latter class.

On these grounds, when he had temporary charge of the Bill at the time of its introduction into this Council, he expressed the opinion that the measure was as applicable to Lower Bengal generally as to the Presidency Towns, and again, in Committee, he advocated the extension of the local limits of its operation.

The majority of the Committee, whilst not dissenting from his opinion on this point, considered that the action of the legislature was in a measure fettered by the correspondence which had taken place between the Government of India and the Secretary of State on the subject of the proposed legislation. It was held that, as the Government had expressly drawn attention to the intended narrow limits of the Bill's operation and its consequent experimental character, the sanction of the Secretary of State should be construed as upholding only the application of the provisions of the Bill to its original local area.

He observed that, whereas the only reason assigned in the despatch to the Secretary of State for the proposed confinement of the measure to Presidency Towns was the assumption that in such places only was the testamentary power exercised to any material extent, it was stated in another passage of the same despatch that, *in Bengal* and in the towns of Madras and Bombay, the power of making nuncupative wills was for the last twenty years found to encourage fraud and perjury. The previous assumption was clearly weakened if not absolutely controverted by this last statement. The letter of the Secretary of State in reply to this despatch conveyed a general sanction to the proposals of the Government of India, without any reference to the fact that the proposed legislation was to apply only to the Presidency Towns; and when this was considered in connection with the latest despatch of the Secretary of State on the subject of this Bill, he did not think that the sanction of the Home Government should be held to be conditional on the operation of the Bill being confined to the Presidency Town; for in that last despatch, which was dated 30th November 1869, it was expressly remarked that the "principle of the Act seems applicableto all Natives of India except those Mussulmans who follow the strict law of Muhammad."

That remark was, he thought, undoubtedly correct, and the only consideration by which we should be guided in the determination of the limits within which the provisions of the Bill should be applied was the extent to which the practice of making wills prevailed, and the consequent need of providing

securities against its abuse. On these grounds, he begged to move the following amendment on the Motion of his hon'ble and learned friend (Mr. Stephen) :—

That this Bill be recommitted with instructions to the Select Committee to take into consideration the propriety of extending its operation to the territories under the government of the Lieutenant Governor of Bengal and to report again after six weeks.

That the Bill as amended, together with this Motion, be forthwith published in the *Gazette of India* for public information.

The Hon'ble MR. STEPHEN expressed his concurrence in the amendment.

The amendment was put and agreed to.

NORTHERN INDIA CANAL AND DRAINAGE BILL.

Colonel the Hon'ble R. STRACHEY introduced the Bill to regulate the construction and maintenance of Public Works for irrigation, navigation and drainage. He said—" My Lord, the Bill having been published under Your Excellency's order when the Government left Simla, almost three months ago, the Council will have had the means of making themselves fully acquainted with its provisions. It will therefore not be necessary for me to enter at any considerable length into an explanation of its objects.

The Bill is designed to consolidate and amend the law relating to Irrigation Works in the North-West Provinces, the Panjáb, Oudh and the Central Provinces. It deals only with works constructed or maintained by the Government, or with the minor works carried out by private persons in connection with Government works. Its provisions extend to Canals for Navigation as well as to those for Irrigation, and also to Drainage Works, which, as defined in the Bill, include all works having for their object the protection of land from flood or erosion by rivers. It is not the intention that the Bill should apply to town-drainage or sewage, but only to what may be called agricultural drainage.

The existing law on these subjects applicable to the provinces I have just named is contained in two Acts, Act VII of 1845, and Act XII of 1866. The former of these Acts, though originally made applicable only to the North-West Provinces, was, some years ago, extended to the Panjáb under the powers then exercised by the Governor General in Council, and now has the force of law in that province under the provisions of the Indian Councils' Act. In Oudh and the Central Provinces there are still no Government irrigation works, and the

necessity for any irrigation law has not yet arisen. The second Act is applicable to the North-West Provinces and Panjáb, but may be extended to any other part of India by order of the Local Government.

Act VII of 1845, which is the essential law on these subjects, is a very short enactment. It professes, in the preamble, to provide for the levy of water-rent, tolls and dues on canals of irrigation and navigation, and for the protection of the canals from injury. It authorizes the Local Government to make rules for the levy of water-rent and supply of water for irrigation, and the payment of tolls, and admission to the benefit of navigation. These rules may be enforced by the temporary deprivation of the benefits of the canal, by fine to the extent of fifty rupees, or imprisonment for fourteen days. The water-rates may be levied as land-revenue, and the tolls for navigation may be realised by the sale of the boat or other floating body. The officers appointed to levy the rates and tolls may be given powers of Deputy Collector and Joint Magistrate to enforce payments and obedience to rules.

Act XII of 1866 exclusively provides for taking land for the construction of private water-courses, it having been doubted whether such land could be taken as for a public purpose. It is a somewhat complicated law, and I am informed has never been put into operation.

It has been generally recognised by all the authorities concerned that the present law, Act VII of 1845, is at present inadequate for the satisfactory administration of the Irrigation and Navigation Canals of Upper India.

That this should be the case is not surprising when consideration is given on the one hand to the circumstances under which that law was framed, and, on the other, to the circumstances of the present time. Still more obvious does it become that reconsideration of the whole subject is necessary when we look forward to the probable future of irrigation works in Upper India.

It is now nearly thirty years ago since my connection with the administration of irrigation works began on the Western Jumna Canal. At that time—I speak of 1840—there was no law whatever relating to irrigation, and among the earliest professional discussions with which I was concerned was the question of providing a law for the purpose. These discussions ended in 1845 by the passing of Act VII. Previously to this period the canal administration had been carried on entirely under rules approved by the Government, the only real coercive power at the disposal of the canal administration having been that of cutting off the water supply of persons who did not comply with the orders of the executive canal officers. The gradual progress from what your Lordship

has recently termed discretionary government, to government by law, led in due course to the passing of Act VII of 1845, and the further pressure of the same influence now calls for a reconsideration and large amendment of the first tentative measure, which has carried us on for the last quarter of a century, not without great cause for congratulation at the general results of our canal administration.

To bring more clearly before the Council the relative position of the canal administration of Northern India when this Act came into operation, and that which it now holds, I will briefly state the extent of the transactions conducted by this department as they were in 1840, and as they now are.

In the former year, the whole capital outlay to date was £195,500; the annual income directly realised by the Canal officers was £37,890, and the annual charges for maintenance and management amounted to £22,030. The number of engineers employed was from four to six, and the Canals in operation were the Western Jumna and Eastern Jumna. We had just begun to carry out new Canals on a small scale in the Dehra Doon, and some works of a minor character had also been executed in the vicinity of Delhi. This completes the list of the irrigation works of that period.

In 1869, the statement of our undertakings is as follows: The capital outlay has risen from £195,500 to £4,129,300, the income from £37,890 to £412,600, and the charges from £22,030 to £215,700. The number of engineers employed is not less than 110 to 120. The list of Canals is largely increased, the Ganges Canal and the Bari Doab Canal being the principal new works. The Canals in the Dehra Doon have been much extended. Works have been carried out in Rohilkhund, and a large series of Canals derived from the Sutlej, Chenab and Indus also have to be included. Nor do the figures I have mentioned fully convey the idea of the present importance of the canal administration, for the figures I have just given refer only to the income directly managed by the Canal officers, while a large additional revenue is received under the head of Land Revenue, which is, in fact, dependant on the Canals, and the indirect advantages to the country due to them are difficult to estimate, and cannot be reckoned at all by a money standard.

Looking to the future, we have before us the prospect of an expenditure of not less than sixteen millions sterling, which may even now be anticipated with tolerable accuracy in the North-West Provinces, the Panjáb and Oudh alone. A canal taken from the Jumna below Delhi is estimated at about half a million, and is already well advanced; extensions of the old Ganges Canal, and

a second canal for the lower part of the Doáb from the same river, may together cost three millions. The general scheme for this last work has been settled, and the project is now in preparation in detail. A canal on the left bank of the Ganges for Rohilkhund, and another to be derived from the Ramgunga river, and other smaller works in Rohilkhund, will probably exceed one million. The designs for these works are well advanced, and operations have been partially commenced on them. For Bundelkhund, an outlay of half a million is not unlikely. In all, the North-Western Provinces may readily exhaust five millions. For Oudh and the districts of the North-Western Provinces between the Ganges and Gogra, an outlay, in all, of five millions more may be contemplated for canals to be derived from the Sardah, the projects for which have been generally settled, and preliminary operations set on foot. In the Panjáb, extensions of the Western Jumna Canal are contemplated, likely to cost, say, three-quarters of a million; the Sirhind Canal from the Sutlej has just been begun, which will require two and a quarter millions, of which about one-third will be provided by the state of Patiala, which, in return, will receive a corresponding share of the water; the completion and extension of the Bari Doab Canal is in progress at a probable cost of half a million. Surveys have been made for canals to be taken from the Sutlej below the junction of the Bias River, likely to cost about two and a half millions, to supply, in combination with the old existing works, the whole tract between the Sutlej and Ravi, as far down as Multan on the one side, and on the other bank of the river will be carried through the British territory into the state of Bháwalpur. The aggregate of the sums thus named is six millions. Beyond the Indus important works will be carried out, for which the surveys are not yet sufficiently advanced to admit of any, even the roughest, estimate of outlay to be named. Besides these projects now actually in course of preparation or execution, there remain the magnificent rivers, the Chenab and Jhelám, to which our Engineers may turn their attention when the work actually in hand is sufficiently advanced to give a hope of any practically useful result being derived from the commencement of new schemes, the realization of which must, of course, in a sensible degree, be determined by financial considerations.

Further I need only refer to the Central Provinces as not having been lost sight of, though the difficulties there to be overcome have been found so great as to have prevented any project for irrigation works being yet brought into a shape in which it could be sanctioned. Engineers are still employed in maturing designs, and it may be hoped that the means will eventually be found for meeting the real requirements of the country there also.

But without enlarging more on the prospects of these operations, enough, I am satisfied, has been said to prove that the interests at stake in connection

with the construction and management of the irrigation works of Upper India, have already reached a very large developement, and that they must necessarily, day by day, grow, and that, before long, the responsibilities of the Irrigation Department will not be second in importance to those resting on any other branch of the public administration. The time has assuredly, come when the law should be placed on a basis which will secure the thoroughly efficient control of the operations of the Irrigation Department, both in relation to the great agricultural community that will be so directly dependent on the satisfactory management of the works, and to the responsibilities that arise from the financial consequences of transactions on so vast a scale as those now in course of realisation or contemplated.

The necessity for a revision of the law relating to irrigation has been felt for many years past, and even as long ago as 1854, the late Colonel Baird Smith was directed by the North-West Provinces Government to frame a new draft. The matter seems to have been lost sight of in the years that followed the mutiny, until it was revived by the Government of the Panjáb in 1867. The present Bill is the consequence of this last movement.

The objects and reasons annexed to the Bill go so fully into its provisions, that it will be hardly necessary for me to explain them at any length. The first object of the Bill has been to place on a satisfactory footing the powers which are now *de facto* more or less commonly exercised under the existing law. It has been the intention to leave such an amount of discretion in the hands of the Local Government in respect to the class of officers who shall carry out the law, and in respect to the details of management, as experience indicates to be expedient. A great machinery exists, which it would be most unwise summarily to set aside, while it is essential, for future progress, to admit of the introduction of modifications of system which shall be shown to be desirable. The time certainly has not come when any attempt shall be made to stereotype by a rigid code the procedure of the irrigation officers in the details of their duties. The power which it is proposed to continue to the Local Government of making rules for the guidance of the canal officers, will give the necessary means of adapting the system of management to the peculiarities of each locality.

It may be a question to what precise extent the specific provisions of the law should go, and how far a discretion may be properly left to the Government to regulate details. This will be for the special consideration of the Council in each particular case that may arise. In framing the Bill, it has been thought preferable to err on the side of defining proposed powers, rather than on that of leaving a discretion, so that as little doubt as possible shall be left of the intentions of the measure.

The experience of the last few years has shown that, if any effectual measures are to be carried out for improving and extending the means of irrigation generally, it is necessary for the Government to possess a power of re-distributing the water supply of districts where irrigation has been going on without Government control for any length of time. Rohilkhund is a province in which the exercise of such a power has become essential as a preliminary for any improvement. The Bill accordingly provides for dealing with private rights in water in a manner analogous to that in which private rights in land may be dealt with under the existing law, when it is necessary to interfere with them for public purposes. The peculiar character of rights and property in water, of course, calls for a special treatment.

The procedure laid down in the Bill to meet this object is as follows :— The existence of the right is to be first ascertained by the revenue authorities and compensation is to be given for any loss arising from a stoppage or diminution of a water-supply, partly by a revision of the land-revenue, and partly by a cash payment when it is held by the revenue officers that such a payment is proper. The amount to be thus awarded will be settled in the same manner as awards are made when land is taken. These provisions have been generally approved by all the local authorities consulted, but they will, no doubt, receive the careful attention of the Council.

Another part of the measure that is new is that which deals with drainage. Here, again, experience has shown that drainage must go hand in hand with irrigation. If the drainage of irrigated tracts be not carefully attended to, not only serious injury is apt to be done to the land, but the health of the population is often affected in an alarming manner. In dealing with this subject the respective obligations of the proprietors of the land, and of the Government as owner and constructor of the canals, have to be carefully regarded, and provision to be made for giving compensation, on the removal of obstructions to natural drainage-channels cleared for purposes of public utility, to proprietors who suffer loss by being thereby deprived of rights of irrigation or otherwise.

The existing customs, in some places better, and in others less well, defined, under which the Government may require the proprietors and labouring population of estates supplied with water from irrigation works, to assist in the provision of the labour necessary for carrying out urgent operations essential for the safety or efficiency of the works, have been considered, and sections introduced into the Bill for placing requirements of this description on a clearly defined and equitable basis. Powers of a like nature, but more extensive than

those contemplated in the Bill, have been given in respect to the Madras Irrigation works by Act I of 1858, and of the absolute necessity of some such powers in a country dependent on irrigation there can be no room for doubt. It will be for the Council to see that the real requirements of the case are properly met and not exceeded.

The chapter relating to the manner in which charges are to be made for canal-water, is probably the most important of the Bill, and that which offers the greatest difficulties. Under the existing law the power of the Local Government to determine how charges are to be made for irrigation is not limited in any way, and there can be no doubt, I think, that if the form of the present law had been retained, the whole of the proposed sections relating to irrigated land could have been issued as Rules by the Executive Government. But it has been thought better, for the reasons I have already given, to introduce into the substance of the Bill the main principles which the Government desires to have recognised in the administration of irrigation works, and this has accordingly been aimed at. The most prominent features of this part of the Bill are the provisions for charging the proprietor of irrigated land with a water-rate as well as the occupier, and for preventing such a system affecting unfairly the interests of the proprietor in relation to the land-revenue.

The sections which relate to the imposition of a rate on land irrigable from a canal, but not irrigated, contain the substance of the plan thought most suitable for giving that financial security for the payment of the interest on the capital invested in these works, which the Government considers of the greatest importance. The proposal is that if, after a canal has been open for five years, the average nett revenue does not amount to seven per cent. on the capital, a general rate may be charged on all land irrigable from the canal, though it be not actually irrigated, of such an amount as will bring up the whole nett revenue to seven per cent. on the capital. Such a proposal is novel in this country, and therefore at first likely to be viewed with some hesitation. But the Government has thought it to be the most likely method of arriving at a final conclusion which shall be generally satisfactory, to make a definite proposal in the form which, on the whole, seems best suited to meet the requirements of the case, and to endeavour to remove any valid objections that may be taken to the plan, and to adopt any improvements that may be suggested in course of discussion. These parts of the Bill, no doubt, require, and will receive, special attention from the Council ; and so far as such a course may approve itself, simplicity may be secured by leaving to the discretion of the Local Government, to be dealt with under Rules, matters which are specifically dealt with in the Bill as now framed.

Further, I need only direct attention to the preamble of the Bill, with the comment made thereon by Mr. Maine. 'The Bill,' he says, 'lays down a proposition which is believed to be a correct statement, not only of the existing custom of India, but of a fundamental rule universally recognised in Western Europe, and nowhere so distinctly asserted as in those European countries, such as Northern Italy, which resemble India in their dependence on artificial irrigation. This proposition is that the property in the lakes, rivers, and streams of British India is vested in the State, subject, in certain cases, to rights acquired by usage or grant.'

With these remarks, I beg to introduce the Bill."

Major General the Hon'ble SIR HENRY DURAND said that it was not his intention to oppose the introduction of the Bill. His object was to guard himself against its being supposed that, as at present informed, he entirely approved of its principles. One of these was an important one, and with respect to it he wished it to be understood that he reserved to himself the right of rejecting or of accepting it. He adverted to the somewhat arbitrary powers taken by the Bill for the imposition of a water-rate upon irrigable lands, whether water be taken or not, when the revenue return upon irrigation works fell short, within a fixed period, of a certain percentage on the outlay. This was a principle which would demand a careful scrutiny in its application when the Bill had to be considered in Committee, and he suspended his own decision even as to the admission of the principle until he saw how it was applied and dealt with. For he observed that, under the powers taken, there was no security for the people exposed to the incidence of this water-cess against their being, in fact, made to pay for failures—for projects ill-considered and ill-carried out. At the same time he observed that the Bill was permissive, rather than absolute, on this point. A Lieutenant Governor might levy the water-rate after the prescribed period of short receipts, and the responsibility was thrown upon him of deciding whether or not to impose the cess. The instruction to do so was not positive, but left him a wide discretion. Under these circumstances, he was not disposed to object to the leave asked to introduce the Bill.

He must, however, remark that he should have preferred that the opinions of the Lieutenant Governors upon this point of a water-rate imposable on irrigable land had been before the Council. The Statement of Objects and Reasons informed us "that this proposal had been introduced into the Bill by the Govern-"ment of India since it was submitted to the Local Governments, and that they "have therefore had no opportunity for expressing their opinions on the very "important questions it raised." The foregoing was written on the 21st of last September, and in the interval of four months that the Bill had been before the public, the Local Governments had had the time necessary for the consideration of the provisions of the Bill. He was not aware whether

they had communicated their views or not. But as they had had the opportunity of so doing, the fact that the Council was not in possession of their opinions on this principle, which involved such weighty considerations, did not seem to him sufficient to raise an objection to the introduction of the Bill.

He contented himself, therefore, with guarding by these remarks against its being understood that the admission of the Bill pledged him to uphold this principle and the provisions based thereon. He held himself free to accept or reject them uncommitted by the leave to introduce the Bill.

KULLU SUB-DIVISION (PANJÁB) BILL.

The Hon'ble MR. STEPHEN introduced the Bill to invest the Assistant Commissioner of the Kullu Sub-division in the Panjáb with certain appellate powers, and moved that it be referred to a Select Committee with instructions to report in a fortnight.

The Motion was put and agreed to.

HIGH COURTS (COSTS OF PETITIONS) BILL.

The Hon'ble MR. CHAPMAN presented the Report of the Select Committee on the Bill to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain monies transferred to Government.

EMIGRATION OF NATIVE LABOURERS BILL.

The Hon'ble MR. CHAPMAN asked leave to withdraw his motion to introduce a Bill to consolidate and amend the law relating to the emigration of Native Labourers.

Leave was granted.

The following Select Committee was named :—

On the Bill to invest the Assistant Commissioner of the Kullu Sub-division in the Panjáb with certain appellate powers—The Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Friday, the 28th January 1870.

WHITLEY STOKES,
Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 21*st January* 1870.

Office Supdt. Govt Printing.—No 0988 L C.—28-1-70—200.

Abstract of Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 28th January 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáhde Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

The Hon'ble F. R. Cockerell.

OUDH TALUQDÁRS ESTATES BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill to relieve from incumbrances the estates of taluqdárs in Oudh, said that the Council was well aware of the peculiar conditions under which the taluqdárs of Oudh held their landed estates. Those conditions had their origin in the arrangements made by Lord Canning in 1858 and 1859, and it would be in the recollection of the Council that those arrangements received finally the sanction of the legislature about a year ago, by the passing of Act I of 1869. In the debate when the Bill was passed, which took place, MR. STRACHEY believed, on the very last occasion on which Lord Lawrence was present as Viceroy in Council, he made a statement which had led to the preparation of the measure which it was now proposed to introduce. Lord Lawrence then said that he trusted that the policy which was about to receive the sanction of the Council that day would be so worked by the taluqdárs and their descend-

ants, that the British Government would never have cause to regret the policy that had been adopted. He said—

"It is in the hands of the taluqdárs themselves to make their privileges a blessing or a misfortune to their relatives, to the subordinate proprietors, and to the cultivators of the soil, and I trust that they and their descendants will so discharge the duties which are bound up with their rights, that the British Government will be satisfied that the policy which is now being declared is sound."

Lord Lawrence then went on to say that it had come to his knowledge that many of the taluqdárs of Oudh were in great pecuniary difficulties, and he said that it was hard that any man placed in the position of a taluqdár should be just and generous to his dependants when he had difficulties of this kind in his own home. He then said that, not many years ago, an Act had been passed in the Presidency of Bombay with the object of relieving the taluqdárs of Guzerat who, MR. STRACHEY believed, formed the aristocracy of that part of the country, and of assisting them to get rid of the heavy incumbrances on their estates. The Act enabled the Government to make advances of money to taluqdárs on the security of their estates. The Bombay Act VI of 1862 appeared to have been worked with the most complete success. In the course of the six years following the passing of the Act, 469 estates came under its operation, and nearly half of those estates had been restored to the taluqdárs in a completely solvent condition and free from all incumbrances. Lord Lawrence proposed to treat the taluqdárs of Oudh in a similar manner, and he stated that it was his intention to direct the Chief Commissioner of Oudh to make enquiries into the actual condition of the taluqdárs, and that he thought it would be right that the Government should then take measures for relieving those taluqdárs who apparently deserved it. He wound up his remarks as follows:—

"I think that, under good management, all those taluqdárs who are really desirous of retrieving their position can do so if they pursue the course it behoves them to follow, and thus prevent their descendants from arbitrarily selling their estates to meet their necessities. If they fail, they will have no one to blame but themselves, and their descendants will be deprived of all means of maintaining their position. The measure I propose appears to me to be justified by sound policy; and I trust that it will also have the effect of showing the taluqdárs of Oudh that the British Government really desires that they should be maintained in prosperity in their present position."

Immediately after that speech of Lord Lawrence, the Chief Commissioner of Oudh was ordered by the Government of India to institute enquiries on the subject. He was informed that it had been brought to the notice of the Governor General in Council that various causes had led to many estates of taluqdárs being greatly incumbered with debts, whilst the legal facilities for the recovery of debts by creditors, and the high interest on loans must tend to the

gradual transfer of those estates to bankers and merchants. The Governor General thought that loans might properly be made from the treasury, with a view to "re-establishing the solvency of these estates, in cases in which the assistance of the Government appeared to be deserved, the taluqdár surrendering the management of the estate to an officer appointed by the Government, as security for the re-payment of the loan."

The result of those orders was, that a minute enquiry into the whole matter was instituted under the orders of the Chief Commissioner of Oudh. He found that there were about fifty of the principal taluqdárs of the province, paying an annual revenue of about £135,000, whose debts amounted to about £327,000. The Chief Commissioner sent up the draft of a Bill, taken almost entirely, with slight modifications, from the Bombay Act of which MR. STRACHEY had been speaking; and that was the Bill, with some further modifications, which he now asked leave to introduce. The Bill provided that, on the application of any taluqdár for assistance of this kind, the Chief Commissioner, if on due enquiry he came to the conclusion that the case was one in which interference of this kind was right, might make a declaration vesting the management of the estates of the taluqdár in an officer appointed by the Chief Commissioner. The effect of that declaration would be that the estate would be made over, for a period not exceeding twenty years, to the management of the officer appointed by the Government. While under the management of this officer, the estates and the income derived from them would cease to be liable to attachment or sale by the courts on account of any debts of the taluqdár, and the power of the taluqdár to alienate or incumber his estates in any way would be in abeyance. The taluqdár would receive such allowance for his maintenance and the maintenance of his family as might be considered appropriate. The amount of the debts of the taluqdár would be ascertained, and the officer appointed to manage the estate would adopt systematic measures for paying off the whole of them. It would rest entirely with the Government to say, in each particular case, whether it would advance money from the treasury or not. It was not proposed to say anything in the Bill about this, but to leave the Government absolutely free to act as it pleased. The present intention was, that no such advances should be made unless the Government was quite satisfied that the whole of the advances could, without any doubt, be repaid, with interest at six per cent. per annum, within ten years. MR. STRACHEY was unable to say what sum of money might probably be actually advanced by Government to the taluqdárs if the present measure should become law; but according to the estimate made by the local authorities, supposing that the whole of the estates to which he had referred were to be taken under the management of Government officers, the whole sum to be advanced would be about £146,000. But

even if the total advances should amount to so much as this, which was not very likely, the whole sum would be little more than one year's income of the estates. Now, as the management of no estate would be undertaken without the Chief Commissioner having satisfied himself that it would be relieved completely in a few years from all embarrassment, the security would be quite complete, and therefore, financially speaking, the Government would run no risk whatever. The taluqdárs themselves were extremely anxious that this measure should be passed. The Financial Commissioner, Colonel Barrow, who was the best possible authority on the subject, said that his belief was that this anxiety on their part was quite real, and that the wish of embarrassed taluqdárs to place their estates under Government management was "to be accounted for by the good opinion they have of Government management as exercised in estates under the Court of Wards in Oudh, and by the fact that our management generally frees them from the incubus of a host of hangers-on, whom they have not themselves the moral courage to get rid of."

Mr. Strachey hoped that there would be no misunderstanding regarding the measure which he proposed to introduce. It was a measure with which it would not be difficult to find fault on economical grounds; and there would be many people who would say that if these estates had been mismanaged by the taluqdárs and thus became encumbered with debts, the sooner they passed into the hands of solvent proprietors, the better. Not only in Oudh, but in other parts of Northern India with which he had been personally acquainted, he had never believed that that principle was a right one to apply. He had always believed, and he thought the experience of 1857 had shown it to be the case, that this was a matter in which we could not afford to ignore the feeling of the people of the country. It shocked every feeling of propriety and justice in the Natives of Northern India, that we should allow estates which had been held in the same family for generations to pass into the hands of strangers—generally of the money-lending class—in satisfaction of decrees of civil courts for debt. He thought there could be no doubt that the experience of 1857 showed conclusively the mischief thus done. The transfer, under the operations of our courts, of many ancient estates into the hands of strangers was found, in 1857, to be a great cause of political weakness, by depriving the Government of the support of the Chiefs whom the people themselves looked on as their leaders; and it also became a cause of internal commotions and bloodshed among the people themselves. He did not intend to defend this measure on economical grounds, but even on those grounds much might be said in its favour; for he believed that, if it was certain that a thing was politically inexpedient and wrong in any country, it was impossible that that thing could in that country be at the same time econo-

mically right, whatever it might be in some other country under different conditions. But however that might be, this was to be looked on as a purely political measure. It was brought forward with the object of strengthening the policy originally adopted by Lord Canning's Government in Oudh, and which was sanctioned by the legislature by Act I of 1869 a year ago. The merits of that policy were now not a question for discussion. The Government believed it to be its duty, and it was the determination of the Government, to carry out that policy fully and honestly, and to give to the great experiment now being tried in Oudh every fair chance of success which could reasonably be given to it. The Bill which MR. STRACHEY now asked leave to introduce would be a pledge of that determination, and would be at the same time a fulfilment of the promise made by Lord Lawrence a year ago.

The Motion was put and agreed to.

EMIGRANTS' REGISTRATION FEE BILL.

The Hon'ble MR. CHAPMAN, in moving for leave to introduce a Bill to enable the Governor General in Council to increase the fees payable under section 31 of Act No. XIII of 1864 (*to consolidate and amend the law relating to the Emigration of Native Labourers*), said that, under the existing law, the fee for registering an emigrant was, except in the case of the Presidency Towns, limited to one rupee. But the total cost incurred for controlling emigration in India exceeded the revenue derived from fees, and it was not deemed expedient that the Government should bear that loss. The object of the present Bill, therefore, was to empower the Government to increase the fee for the registry of an emigrant to any amount not exceeding double the present amount.

The Motion was put and agreed to.

KULLU SUB-DIVISION (PANJÁB) BILL.

The Hon'ble MR. STEPHEN presented the Report of the Select Committee on the Bill for investing the Assistant Commissioner in charge of the Kullu Sub-division of the Kángra District with certain appellate powers.

The Council adjourned to Friday, the 4th February 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 28th January 1870.

Office Supdt. Govt. Printing.—No. 7201 L. C.—1-2-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 4th February 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding*.

His Honour the Lieutenant Governor of Bengal.

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.,

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

FEMALE INFANTICIDE BILL.

The Hon'ble MR. STRACHEY introduced the Bill for the prevention of female infanticide, and moved that it be referred to a Select Committee with instructions to report in a month. He observed that, when he obtained leave to introduce the Bill, he had said enough to show the Council the terrible prevalence of the crime of female infanticide in Northern India, and to show the necessity for legislation to enable the Government to carry out its determination that this crime should no longer be borne with, and that it would spare no efforts to eradicate this abominable custom, which had been too long suffered to be a reproach to our administration. Although he would not repeat the facts he had then stated, there were one or two points which he had omitted to notice, and to which he would now briefly refer. One omission which he had made was this—that he had made no reference whatever, as he certainly ought to have done, to the noble efforts taken through a long series of years in the Bombay Presidency to suppress the practice of female infanticide in Katíawár and Katch. Although he was referring specially to the prevalence of this

crime in Northern India, he felt that he ought not to have passed over in silence the fact that more had probably been done in the Bombay Presidency for the suppression of this crime than in any other part of India. An excellent account of the measures taken by the Bombay Government for the suppression of female infanticide had been published by the learned and accomplished Missionary of the Free Church of Scotland, Dr. Wilson. MR. STRACHEY might mention his work as containing a mine of information on everything connected with the subject. There was another point to which it had been his full intention to refer, but which he had forgotten. He had been reminded of the omission by more than one person. In consequence of the decrease in the number of female children, brought about by the prevalence of the crime of female infanticide amongst the Rájputs of Northern India, it frequently happened that it was extremely difficult for the Rájputs to find wives of their own caste for their sons. The want thus felt was not uncommonly provided in a very abominable way. There was a system under which persons who made a regular trade of the business kidnapped or purchased girls with the object of selling them as wives to these Rájputs. Children of lower castes were stolen or purchased and passed off as Rájput girls to men who wanted wives, and who were content to accept them with little or no enquiry. As long as it was not publicly known that the statement was certainly false, no objection was made. Besides this custom of kidnapping, which there was reason to fear to be extremely prevalent, there was no doubt that, in very many cases, girls of lower caste were sold voluntarily by their parents, in the belief, which no doubt was usually well-founded, that these girls would be kindly brought up and would ultimately be well married. An interesting account of this practice would be found in the Oudh Police Report for 1866, and he might refer in particular to the report of Captain Sharpe, an excellent Police officer in that Province, who had made careful enquiries into the subject. The Oudh authorities were satisfied that the practice MR. STRACHEY had been describing was extremely common. Girls from three to fourteen years of age were purchased from their parents by people, usually themselves Rájputs, who then gave out that the girls belonged to their own families. They looked out for some family where a wife was wanted, and the purchasers then got paid for the girls by Rájputs who wanted wives. Captain Sharpe referred in his report to one old woman, whose case was under investigation, who had followed this trade all her life, and said that she could not count the number of girls she had thus disposed of. This practice of kidnapping and selling children was one extremely difficult to deal with, but at the same time there was no reason to suppose that any special legislation was necessary for its suppression, and consequently there had been no reference to it in the Bill.

When MR. STRACHEY asked for leave to introduce the Bill, he said that, in regard to the remedies to be applied for the suppression of this great evil, there was fortunately no reason for doubt, because we had ample experience to show how the crime ought to be dealt with. The measures taken had been of two kinds—those which aimed at the removal of the cause which mainly led to the commission of the crime—that was to say, the prevention of extravagant expenditure on marriages; and, secondly, measures of a coercive and directly preventive character. The present Bill proposed to give to the Local Governments power to carry out measures of both classes.

The Bill would enable the Government to lay down rules for regulating and limiting marriage-expenses amongst the classes who were found addicted to the practice of female infanticide. Although it might seem difficult to make rules on such a subject as this, still, as a matter of fact, it had been found that a great deal might be done in this direction; and this was rendered more easy by the fact that the people themselves were well aware of the folly of spending all this money on marriages, and when a little pressure was put on them by the officers of the Government, they were very glad to find an excuse for limiting their expenditure. The Bill further enabled the Government to order a complete system of registration of births and deaths in suspected places to be carried out, and a constant system of periodical inspection and enumeration of children. It had been found by experience that this had the effect of saving the lives of a great number of children; for, if a child was not killed immediately after its birth, and its life was saved even for a few hours, there was commonly little danger of its being killed afterwards. The Local Governments would have power to institute and maintain a system of registration of births and deaths in suspected places and amongst the persons to whom the proposed Act should have been made applicable; and to order the entertainment of special Police officers, or other officers and servants, for the purpose of making this registration or for carrying out any other of the provisions of the Act. The Bill further enabled the Government to levy from the parties concerned the whole expense incurred in carrying it into effect. The Bill, as MR. STRACHEY had already informed the Council, had been circulated to all the Local Governments and Administrations of Northern India, and it had received the approval of the whole of them.

He had hoped that the Council would have had, in the discussion of this Bill, the assistance of our colleague, His Highness the Mahárájá of Jaypúr. Unfortunately he had been compelled by illness to leave Calcutta; but although His Highness had been unable to take a part in the discussion of this measure in the Council, he had left behind him in writing a statement of

his complete approval of the Bill, and of his determination to spare no efforts within his own territory to co-operate with the determination of the British Government to eradicate the practice of female infanticide. MR. STRACHEY was sure that he would do so, and it would be difficult to exaggerate the value of the assistance which the Mahárájá, one of the great Rájput Chiefs of India, would thus be able to afford in the suppression of this abominable crime among the people of his own class. With His Excellency the President's permission, MR. STRACHEY would read to the Council the remarks which the Mahárájá had made upon the Bill. He said—

"Speaking for myself, I fully concur with the spirit of the Bill introduced by my hon'ble colleague, Mr. John Strachey, for the prevention of female infanticide in the North-Western Provinces, the Panjáb and Oudh, and the measure has my hearty support. It shocks my feelings to think of the horrible crime which the Bill contemplates to suppress, and I pity those deluded individuals who, under a misapprehension of a sense of honour, are led, against their natural feelings, to sacrifice their own offspring to the altar of a revolting custom, which has no other authority than that of antiquity to support it. The Hindú *Cástras* are replete with ordinances as to the duties of a father to his daughter, and invoke the tenderest of all feelings for one's own offspring without distinction of sex. The shocking custom, therefore, which necessitates the men of my caste to murder their own infants—a custom which steels their hearts against the feelings of nature, and induces them to commit a crime which is even repugnant to instinct, has nothing to do with the religion of the people; and I for one would carry out the measure in such a vigorous way that the hateful practice may soon die out under the pressure of the law. The regulation of marriage-expenses, I believe, was introduced into my own territories by one of my ancestors, the Mahárájá Siváí Jay Singh, one hundred years ago, and I am still enforcing the same law in a modified form, which has had the effect, perhaps, of making it more rigorous; and I dare say that the introduction of a similar measure within the British territories will be calculated to do infinite good to the British subjects. It is, therefore, with feelings of no little pleasure that I hail the introduction of the present measure in the Governor General's Council; and I have not the slightest doubt in my mind that the right-thinking and intelligent portion of my caste-men will never fail to appreciate the benefit of the law now contemplated, and will agree with me in looking upon the proposed enactment as a real blessing to them.

I am exceedingly glad to find that my hon'ble colleague has traced out the real causes which lead to the commission of infanticide in India, and I would beseech my own caste-people to co-operate with the Government of India in the suppression of the crime, and in dispelling the false and mistaken sense of honour which at present prevents a high-born Rájput from marrying his daughter to one inferior in rank in his own clan. If some of the Rájput chiefs of the day will take the initiative at the present moment, I dare say that the mistake operating so banefully in its results upon the Rájput community will soon disappear.

The call of humanity loudly demands the enactment of the present Bill, and in the terests of humanity I would heartily support it in all its stages through the Council.

Major General the Hon'ble SIR HENRY DURAND said that he was not at all surprised at hearing the contents of the paper read out by the Hon'ble Mr. Strachey and written by His Highness the Mahárájá of Jaypúr. SIR HENRY DURAND thought that it would have been a matter of very great surprise and regret if one who, he might say, had a hereditary right to take a leading part, had not stepped forward in the manner he had done to support the measure which the Government had brought before the Council. It must be a matter of great satisfaction to His Excellency to have the support of one of the leading Rájputs of India, a man whose family carried back its rise to about the third century of the Christian era, a family which had been ruling where it now ruled for 900 years, and who amongst its line could produce men who certainly, if any men in Indian history deserved to be remembered, were worthy of renown. It would perhaps be out of place for him to notice many of the great men who were ancestors of this very Mahárájá; but he hoped he would be allowed to note two instances: one was Mán Singh, the Commander of the Forces of the Empire, a man who conquered for the Emperor the whole of Orissa and Assam, who was, it might be said, the first Lieutenant Governor of the Emperor, for Bengal, Behar, and Orissa, who also ruled the Deccan, and who took up the armies of the Emperor to Cabul, and governed Afghánistán, maintaining order and tranquillity among the turbulent Afghán tribes. Such was one of the ancestors of the Mahárájá of Jaypúr, whom SIR HENRY DURAND brought forward as a man of note. And perhaps, if SIR HENRY DURAND were to consult his own professional feelings, there would be a tendency to give great weight to the abilities and fame of a man who at that time could maintain such sway in and out of India. But great as were the merits of this man, he could not say that he was inclined to regard him as the greatest of the ancestors of the Mahárájá of Jaypúr. There was another ancestor of his, the renowned Síváí Jay Singh, to whom the Mahárájá adverted as having first set the example of devising measures for the suppression of the crime of female infanticide, and who was known as a great Mathematician, a great Astronomer, and a great Engineer and Architect, but above all, as a most humane and intelligent ruler—one who, for these great qualities, was felt to be more than an ordinary man, and who obtained the name of *Síváí*, which meant in our idiom that he was a man and a half. Under such circumstances, with such an ancestor, SIR HENRY DURAND was not at all surprised to see the Mahárájá coming forward to support these measures. It showed that the old chivalrous spirit of his Rájput ancestors had not died with them, but still lived, when the Mahárájá of Jaypúr came forward in the way he did to uphold what was right, and to promise that he, the head of the Chuchwaha Rájputs, would make applicable to his own territories similar measures. There he had full and entire power to do as he intimated he meant

to do; and SIR HENRY DURAND was sure that the Government of India would value extremely the co-operation of one circumstanced as the Mahárájá of Jaypúr was circumstanced. He would add that, some time ago, he observed in the newspapers the reports of a Social Science Congress at Jaypúr, which was established by the Mahárájá. He (SIR HENRY DURAND) thought that perhaps there could hardly be a subject on which that congress could be employed with greater advantage than in connection with the suppression of female infanticide.

He was quite sure that the Mahárájá's example would have great effect amongst all the Native Chiefs of India; amongst the Rájput chiefs, not only of Rájputána, but of Central India, where the crime was more or less prevalent: there, it had been to a certain extent kept down; but still it prevailed, and there was little doubt that the example of the Mahárájá would tend to check the practice.

He need hardly say that he heard with great satisfaction the Hon'ble Mr. Strachey adverting to the labours of the Bombay Government in the suppression of female infanticide. SIR HENRY DURAND could almost wish that, when his Hon'ble friend quoted the work of Dr. Wilson, he had also quoted a part of the dedication of that work to a man who was one of the ablest, most honest, hard working, intelligent members of the Civil Service; he meant John Pollard Willoughby, who devoted himself to all that was right and good and for the benefit and promotion of the welfare of the Natives of India. With the permission of the Council, SIR HENRY DURAND would read, as the work lay before Mr. Strachey, an extract from Dr. Wilson's preface. After quoting the names of Duncan and Walker, he concluded with Willoughby, and said of him—"Willoughby, who ultimately suggested or adjusted the practical measures of inquiry, registration, review, reward and punishment, which, through the Divine blessing, have effected its extinguishment as a custom."

He (SIR HENRY DURAND) thought that the labours for the suppression of this crime on that side of India had been fully as great, and fully as continuous, as any we had attempted in Northern India. He was far from thinking that, either on that side of India or in Central India and Rájputána, or in Northern India, there had been as yet any adequate success; but he was certain that, with this law which His Excellency the Viceroy intended to pass, and which the Council would no doubt support, and with the support and example of the Mahárájá of Jaypúr and his noble-hearted ancestors, His Excellency might expect that this measure would be one of those which in future years would be looked back to as marking His Excellency's administration with one great commanding act of benevolence.

His Excellency the PRESIDENT said—"I have little to add to what has been so ably and eloquently said by my two hon'ble colleagues.

"The only regret that I have to express with regard to His Highness the Mahárájá of Jaypúr is this, that he is unfortunately not present today in order to declare his sentiments by his own mouth; but I am in a position to state that his absence from Calcutta has been occasioned by untimely illness.

"I hope, however, that this will be only temporary, and that, before long, we shall again have the advantage of his presence at this Council. I can only say with regard to what His Highness has done in this matter, that it is in conformity with the general course of conduct which he has invariably adopted, and more particularly since he has been a member of this Council. During the short time he has been among us, he has been able on more than one occasion to afford this Government valuable and practical assistance. The whole course of his conduct in reference to the treaty with regard to the Sámbhar Salt, which was undertaken by this Government entirely in the interests of the people, in order to endeavour to provide at a cheaper rate one of the prime necessities of life, has been most praiseworthy. The assistance which he has given to us has been in all respects most cordial, and I believe that assistance has been given with a sincere desire, not only to assist the British Government to maintain their revenue, but also to confer lasting benefits upon the people.

"It must be gratifying to the Mahárájá to have been able to state, as he has done in his letter today, that one of his distinguished ancestors, who was mentioned with so much feeling by my hon'ble colleague, Sir Henry Durand, was perhaps one of the first of Native Princes who made any endeavours to restrain this frightful practice of the murder of children by their own parents; and it is no shame to the British Government that, many years afterwards, they endeavoured by legislation to follow the same course as that which the Mahárájá's ancestor attempted to carry out more than one hundred years ago. I can only say that the Mahárájá's whole conduct in this matter shows what valuable assistance Native Chiefs and Princes, and rulers of this country, can give, when they are so disposed, to this Government, in their efforts to improve the general, social and material condition of the people; and we may cordially, I think, echo the sentiments expressed in the Mahárájá's letter, when we say that we feel with him that, in the efforts we are making now to abolish this abominable crime, we are conferring real blessings upon the people themselves—blessings which, I believe, the very people who are now engaged in this practice, will before very long be the first to appreciate.

"I believe, with regard to the Bill itself, that the mode in which it is proposed now to deal with this crime is the best and the most efficient that can be devised. It is a mode of dealing which is not calculated in any way to shock or to oppose the prejudices or feelings of the people themselves. It will be to a certain extent a gradual process, but I believe that its being gradual will not in any degree lessen its efficiency.

"I cannot help saying that, if the undertaking which we are engaged in today is successful, it will rank on a par with the abolition of suttee, thuggee, and other practices, in the suppression of which the British Government in India have been always engaged, and which I believe has tended more than anything else to vindicate the justice and wisdom of our rule."

The Motion was put and agreed to.

KULLU SUB-DIVISION (PANJÁB) BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill for investing the Assistant Commissioner in charge of the Kullu Sub-division of the Kángrá District with certain appellate powers, be taken into consideration. The Committee had made no alterations and recommended that the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill be passed.

The Motion was put and agreed to.

HIGH COURTS (COSTS OF PETITIONS) BILL.

The Hon'ble MR. CHAPMAN moved that the Report of the Select Committee on the Bill to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain monies transferred to Government, be taken into consideration. The Committee had made no alterations and recommended that the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN then moved that the Bill be passed.

The Motion was put and agreed to.

MILITARY CANTONMENTS BILL.

The Hon'ble Mr. Cockerell asked leave to postpone the Motion which stood next on the List of Business, for leave to introduce a Bill to amend the law relating to Military Cantonments.

Leave was granted.

The following Select Committee was named:—

On the Bill for the prevention of female infanticide—The Hon'ble Messrs. Stephen, Chapman and Cockerell, His Highness the Mahárájá of Jaypúr and the Mover.

The Council adjourned to Friday, the 11th February 1870.

WHITLEY STOKES,
Secy. to the Council of the Governor General for making Laws and Regulations.

Calcutta,
The 4th February 1870.

Office Supdt. Govt. Printing.—No. 7618 L. C.—10-2-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 11th February 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

REGULATIONS AND ACTS CONSOLIDATION BILL.

The Hon'ble MR. COCKERELL, in moving for leave to introduce a Bill to consolidate and amend the law relating to the local extent of the general Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities, said that the immediate cause of the present proposal to legislate in this matter was the discovery that the district or tract of country called the Dehra Doon was not subject to the general Regulations.

A case instituted in that district under Act X of 1859 (An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal) recently came before the High Court of the North-Western Provinces in appeal, in which it was contended that, as the Act just mentioned was not legally in force in the Dehra Doon, the Court had no jurisdiction in the matter.

The High Court in its judgment held that the enactment referred to was simply an amending Act and contained no special provision by which it could, *per se*, have a wider application than the Regulations which it superseded.

As there was nothing to show that the Act had been put in force in the Dehra Doon district by any special procedure, the question of its legal operation therein turned upon the issue of the broader question as to whether the district was subject to the general Regulations. On this point the Court found that the effect of the several enactments relating to this district, passed between 1817 and 1829, was to place it in the category of districts not subject to the general Regulations.

For the past thirty years, the administration of justice had been carried on in the Dehra Doon in the belief that the general Regulations were legally applicable to that district, and it now became necessary to give, by legislative enactment, validity to proceedings which had taken place under an erroneous impression as to the state of the law, as well as to provide for the future legal operation of those Regulations within that locality.

The present need for legislation in this matter was thought to offer a fit opportunity for consolidating the law as to the local application of the general Regulations and Acts.

About two years ago a Repealing Act was passed in this Council, by which a very large number of obsolete Regulations and Acts was removed from the Statute-book. The avowed main object of that action of the Legislature was to clear the way for the work of consolidating the extant Regulations, which, it was hoped, might be undertaken at no distant period.

There was perhaps no single branch of that work in relation to which more could be done towards disencumbering the Statute-book than that which was comprised in the subject of this Bill. The older provinces of the empire were formed into Presidencies and subjected by Acts of Parliament to such Regulations as might be passed by the Governor General of India from time to time; but in the case of all subsequent acquisitions of territory, the operation of those Regulations was secured by special local enactment, and the result of this practice was that there was now a large accumulation of Regulations and Acts, enacted solely to provide for the extension of the operation of the general laws, and to define the local limits of the jurisdiction of the several Courts established in these newly acquired provinces or districts.

It would be the aim of the Bill to dispense with the necessity for retaining these extending enactments, by declaring, in concise form, what provinces were subject to the general Regulations and Acts of the Indian Legislature.

The Bill contemplated no extension of those laws to places in which they were not already in force, except in so far as might be found necessary to remedy any mistakes which might have occurred, as in the case of the district of the Dehra Doon.

The Hon'ble MR. STEPHEN asked permission to make a single remark on the principle of the Bill, because it formed part of an extensive scheme to which he hoped to refer more particularly at some future time. The present Bill was a proposal for the consolidation of the laws defining the local extent of the general Regulations and the local limits of the jurisdictions of the High Courts and the Boards of Revenue: it would consolidate into one Act, he could not at present exactly say how many, but certainly not less than a hundred, enactments scattered throughout the Statute-book, and would reproduce in a single measure what now had to be searched for in a dozen volumes. That would give some idea of the extent to which consolidation might be carried. He could hardly imagine any legal reform in this country greater than that of consolidating the Written Law, inasmuch as, after a careful consideration and examination of the subject, he had arrived at this amongst other results, that in British India there were no less than twenty-one classes of laws, enacted by nine different authorities for nine different provinces. This shewed how intricate and complicated the Written Law of British India had become. He thought that, if the matter were fairly managed, it would be possible to digest the Written Law in such a manner as to show that, although intricate and complicated to a person fresh to the subject, it was really of much smaller extent, and was less unsystematic than it appeared to be. This Bill was a step in that direction, and he hoped to be able soon to submit a comprehensive scheme for the consolidation of the unrepealed Regulations and Acts.

The Motion was put and agreed to.

EMIGRANTS' REGISTRATION FEE BILL.

The Hon'ble MR. CHAPMAN introduced the Bill to enable the Governor General in Council to increase the fees payable under section 31 of Act No. XIII of 1864 (*to consolidate and amend the law relating to the Emigration of Native Labourers*). He said that this Bill would empower the Governor General in Council, at his discretion, to increase the fee of one rupee now leviable in the Mofussil for the registration of emigrants, to two rupees. By this means the Government would be reimbursed the expense they were now put to in supervising emigration. The measure was of so simple a character that he would not move that it be referred to a Select Committee, and he proposed to ask the Council to pass it at their next meeting.

WEIGHTS AND MEASURES BILL.

Colonel the Hon'ble R. STRACHEY asked leave to withdraw his motion for leave to introduce a Bill to regulate the weights and measures of British India.

Leave was granted.

NATIVE PASSENGER SHIPS' BILL.

The Hon'ble MR. CHAPMAN moved for leave to introduce a Bill to make further provision for the regulation of Native Passenger Ships. He said that it had been brought to the notice of the Government of India that the practice of over-crowding pilgrim-ships from the British ports to Jedda prevailed to a frightful extent. The way in which the law was evaded was this: A ship cleared out of a British port with all her papers in regular order, and with the proper number of passengers. She put in at other ports not under British jurisdiction, and there took in any number of pilgrims. The miseries to which these unfortunate people were subject in these overcrowded vessels, would best be perceived by a perusal of a recent report on the subject to the Government of India. The first case cited was that of a ship which MR. CHAPMAN thought was miscalled the *Day Dream*, but which should rather be called the *Nightmare*. She was licensed at Singapore to carry 216 passengers. She took 150 pilgrims from Singapore; but, instead of proceeding direct to her destination, she took twenty-three from Malacca, fifty from Pinang, one hundred and fifty from the Peder Coast (Diamond Point), sixty-three from Passangan, ninety-one from Jonkow, thirty-five from Peder, fifty from Acheen; thus carrying upwards of 613 passengers, when she was licensed to carry only 216. The sufferings of these unfortunate people were thus described by the chief officer of the vessel. He said—

"With regard to the space allowed to the passengers, the hold was full and the cabins were also full, and a small temporary house, a little better than a box, was put on board, wherein nearly forty women were stowed. This box was about ten feet in length and ten in breadth, and three to four feet high. In the round-house there were about twenty-four women with their husbands. The squares of all the hatches, which ought to have been left free for ventilation, were all lumbered up with jars of oil, and the pilgrims could but hardly creep out of the between-decks. The horrible state of the vessel was indescribable, and the stench arising from the hold was insufferable. There was no opportunity, from the crowdedness of the vessel, and the luggage being thrown over all the decks, to keep her clean, and she was consequently in the most filthy and dangerous condition."

Another case was that of a vessel which apparently bore an Arab name, the *Atiet Rahmán*, of 704 tons burden, from Jedda to Calcutta, whose space was registered at 23,364 cubic feet; but, after deducting for encumbrances, there

remained only 14,700 feet, and allowing only fifty-four cubic feet for each person, there was barely accommodation for 272 persons; yet there were 461 pilgrims on board. The Master Attendant at Cochin thus described the condition of this vessel and the pilgrims it carried :—

"The effluvium escaping from the hatches was indescribable, and it is a matter of surprise that no contagious disease had generated. What prophylactic power the cargo of salt on board may have exercised, I am not prepared to say; but certain it is that the state of things was most favourable to the production of disease."

* * * *

"The men appear wretchedly weak and sickly, and their emaciated and squalid condition seems to support the complaint made by them of want of food, room, and general comfort. The women were mostly of very advanced age, and in a state of decrepitude that renders it surprising how they could have ventured upon these tedious and harassing expeditions. These unfortunate beings were so deplorably helpless, as to be scarcely able to go on deck for the purposes of nature. The children were poorly in the extreme, apparently from exposure and want of food. There were two infants in arms."

There was a mortality of thirty-one on board. MR. CHAPMAN thought that Hon'ble Members who knew what the temperature of the Red Sea was, even under the most favourable circumstances, in the commodious and well ventilated vessels of the P. and O. Company, need hardly be told of the miseries of the people in the cases to which he had just referred. It was high time that such practices were put a stop to, and he hoped the Bill he now moved for leave to introduce, would have the effect of doing so.

The Motion was put and agreed to.

The Council adjourned to Friday, the 18th February 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 11*th February* 1870.

Office Supdt. Govt. Printing.—No. 7726 L. C.—16-2-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th February 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

COURT FEES BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to provide for the better regulation of Court Fees be taken into consideration. He said that the Bill as amended by the Select Committee was published in the official Gazettes immediately after the presentation of this report to the Council, and had been before the public for some weeks.

Having regard also to the extreme inconvenience of any considerable delay in the disposal of a measure of this kind, which must necessarily, so long as it remained in abeyance, disturb and unsettle the entire litigation of the country, he thought they were clearly justified in proceeding now to the final consideration of the matter.

The amendments proposed by the Select Committee comprised several additions and alterations, chiefly directed to the removal of all ambiguity in regard to the proper valuation of suits and the more complete consolidation of the various provisions of the existing law, now scattered over several enactments, relative to Court fees.

The main provisions of the original Bill, namely, the rates of fees prescribed by its schedules, had undergone no material alteration. The contemplated distinction between probates and letters or certificates of administration, which followed the English law on this subject, had been abandoned; and it was now proposed to substitute an uniform two per cent. rate on both classes of instruments, for the rates, varying from two to one and a quarter per cent. on probates, and ranging between three and one and three-quarters per cent. in the case of letters and certificates of administration, propounded by the Bill as introduced. But the rates of fees chargeable on the institution of suits and appeals remained unchanged, save as regarded the maximum limit, which it was thougkt should be reduced from rupees 5,000 to 3,000.

From the general absence of hostile criticism it was to be inferred that public opinion was in favour of the proposed scale.

In two quarters only had the rates been objected to. In one of these, the objections raised went to the extent of condemning the principle of any special tax or charge upon the administration of justice. Now, he was not going to attempt to defend that principle. It seemed to him quite unnecessary to enter into any discussion on that point at the present time. They were not considering a proposal to impose any new tax in this direction, or even to increase any existing charge. The present measure was one of absolute concession. It embraced a reduction, to some extent, of the fees hitherto levied in every case. They had also to consider the facts that a tax not substantially different in amount from that prescribed by this Bill had been in operation for upwards of half a century, and that the State could by no means afford at the present juncture to part with the revenue derived from it.

There was one statement, however, put forward amongst the objections just referred to, which appeared to him to misrepresent the facts of the case on such an important point as to call for some notice. It implied that the rates of fees in operation in the Mofussil Courts were much higher than those levied on the original side of the High Courts and in the Presidency Small Cause Courts; and that, consequently, the suitors in the former were thus placed at a disadvantage with the latter. He believed this assumption to be wholly incorrect.

In 1862, shortly after the constitution of the High Courts by the amalgamation of the late Supreme and Sadr Courts, it was proposed to substitute *ad valorem* rates for the fixed fees which had theretofore been in force in the late Supreme Court, in order that there might be an uniform system on both sides of the new Courts; but the project was abandoned in consequence of the

Government being advised, on the most competent authority, that the change would most probably be attended by a considerable loss of revenue. And as regarded the fees levied in the Presidency Small Cause Courts, he (MR. COCKERELL) thought he was correct in stating that the charge amounted to two annas per rupee, or twelve and a half per cent. on every suit, which considerably exceeded even the highest percentage obtaining under Act XXVI of 1867.

The other objections urged against the proposed rates rested on a comparison which had been instituted between the scale of fees laid down in Act X of 1862 and that contained in the Bill. For the purpose of this comparison, the amounts had been selected on which the incidence of the rates chargeable under Act X was lightest; and the fees chargeable under the Bill on such amounts had been compared with the fees imposed by Act X, to the manifest disadvantage of the former. The radical objection to the scale of fees which obtained under Act X of 1862 was, as he had before stated, the extreme irregularity of its incidence. For example, under that law, the same fee—that is, one rupee—was charged on a suit for one rupee as on a suit for sixteen rupees; so also an uniform institution-fee was levied on every suit the amount or value of which ranged between rupees sixteen and rupees thirty-two.

Under the Bill, the fee was adjusted in gradual proportion to the amount of the suit; so that, in the case of suits of amount ranging between one rupee and sixteen rupees, the fee varied from six annas to one rupee and eight annas; and in respect of suits for any amount between sixteen and thirty-two rupees, from one rupee and eight annas to two rupees and ten annas.

The selection, therefore, of suits of sixteen rupees and thirty-two rupees' amount or value, on which the incidence of the tax imposed by the former law was lightest, as points of comparison, was obviously a fallacious test of the relative effects of the two scales. If the mean or average rates chargeable under either scale were compared, the charges contemplated by the Bill would be found, in the case of suits of small amount, to be more favourable to the suitor than the fees prescribed by the former law; *e. g.*, on a suit for eight rupees the fee prescribed by Act X of 1862 was one rupee; under the Bill it was only twelve annas. In respect of a suit for rupees twenty-four, the fee formerly was two rupees; when the Bill became law it would be one rupee and fourteen annas.

He would not take up the time of the Council with further illustrations of the relative effects of the two scales. It was sufficient to state that a detailed comparison of the average rates in force previous to 1867 with those of the

Bill would show that, as regarded the great mass of the litigation of this country—*i. e.*, suits the amount or value of which did not exceed one thousand rupees—the latter were not materially in excess of the former, and that a substantial concession was made in regard to claims for amounts under ten rupees.

The most important amongst the additions and alterations proposed by the Select Committee were the provisions relating to the valuation of suits, contained in section 7 of the amended Bill.

An attempt had been made to supply an omission common to all previous enactments, regarding fees leviable on the institution of suits. Hitherto, it had been the practice to provide only for the valuation of the property to which the suit had reference, leaving out of account altogether the various litigated claims to something less than the full interest or title in such property.

In the several descriptions of suits specified in clauses iv, vi and vii of section 7, the litigated matter was not the right to the possession of the property to which the suit related. Such possession was not disputed, and the question at issue involved merely some minor interest; yet, in the absence of any provision of the law applicable to such claims, it was probable that they were very generally valued by the parties instituting them as though they involved the entire interest in the property with which they were connected.

The Bill aimed at providing rules for the valuation of every known class of suits, as far as possible according to the interest actually in dispute in each case, by which the suitor would be relieved from his present liability to a self-imposed excess charge; and the uncertainty and want of uniformity of practice on the part of the Courts in determining the proper valuation of suits of this kind would be avoided.

To remove any doubt as to the intended application of the word "estate," which occurred frequently in the 7th section of the Bill, it had been defined to include every description of land-tenure subject to the payment of revenue to the Government. It was doubted whether, in the absence of this explanation, the term could be properly held to include the ryotwárí tenures in the Madras Presidency. It was thought that the valuation of Inám lands should follow the rule applied to land exempt from payment of Government revenue.

The revenue paid to Government on account of Inám land was a mere quit-rent; the market-value of such land was therefore in inverse ratio to the amount of such payment, *i. e.*, in the proportion in which the rent was less, the greater was the margin of profit to the holder, and the consequent market-value of the

land. In such cases the amount of the revenue paid to Government obviously formed no proper criterion as to the true value of the property.

A rather important verbal alteration was proposed in section 8. This section, as originally drawn, followed the provision of the existing law on this subject; but the Committee were strongly of opinion that local investigations for the purpose of valuing a suit should be discouraged as much as possible, as, in effect, they entailed on the parties to the suit all the trouble and expense of an extra suit, merely to determine the question of the amount due to the revenue. They proposed, therefore, to substitute words the effect of which would be to require the Court to determine, in each case, whether such local investigation was necessary or expedient, instead of directing the enquiry to be made as a matter of course on the mere requisition of a party to the suit.

The original Bill contained no effectual provision as to the consequence of the non-payment of the additional fee discovered to be due by the results of the local enquiry as to the market-value of the litigated property. The amended Bill empowered the Court to fix the time within which such additional fee must be paid and to dismiss the suit in default of such payment.

In section 10 an omission of the original Bill and of the existing law had been supplied by the suggested provision for cases in which the amount of the mesne profits claimed was left to be determined in the course of the execution of the decree. It was proposed to apply the same consequence, as in the case just stated, to the non-payment of the additional fee which was found to be due.

In amendment of the existing law, it was proposed to make the decision of the Court in which any suit or appeal was instituted, in regard to the valuation of such suit or appeal, final as between the parties thereto, reserving to the Appellate Court, for the protection of the interests of the revenue, a power of interference of its own motion where the valuation admitted by the lower Court was clearly wrong and had occasioned loss to the revenue. It was thought that the interests of the parties to the cause should in no way be allowed to be affected by the question as to whether the just demands of the revenue had or had not been satisfied, and that the present practice, under which litigation might be protracted on grounds which had no connection with the question on which the parties to such litigation were at issue, was most objectionable, and should be discontinued.

Section 13 was in modification of section 377 of the Code of Civil Procedure. By the latter, on an application for review of judgment presented after ninety

days from the date of such judgment, the same fee was levied as if it were a plaint in a suit; whilst an application made within the ninety days was subject only to the fee chargeable on ordinary applications. In many cases, where the delay had occurred through no laches on the part of the applicant, this rule had been found to entail hardship; and the measure of relief provided by this section, under which a refund of the difference between the amount paid and that which would have been payable had the application been presented within the ninety days might be obtained in such cases, was thought to be called for.

The amended Bill provided for the levy of *ad valorem* fees on applications for a review of judgment, in substitution for the fixed fee now chargeable thereon. This enhanced charge was recommended to discourage the practice, which was said to have become prevalent, of seeking to obtain the rehearing of a suit through an application for review of judgment on the most frivolous grounds, by which the time of the Courts was needlessly wasted.

It was proposed, through the provisions of section 14, to guard against the increased fee working harshly, by allowing a refund of the enhanced amount payable under its operation, where the result of the application was the reversal or modification of the previous judgment, on such grounds as amounted to an admission of the Court's error.

To section 18 it was proposed to add some additional exemptions. In England, the duties on probates and letters of administration relating to property of small amount were remitted. It seemed right that a similar exception should be made in this country, and that the limit within which such duties should not be made chargeable should be one thousand rupees.

Having regard to the relations subsisting between the Government and the agriculturists of this country in the matter of irrigation, it was clearly inexpedient to impose a fee which might operate as a restriction to free communication between the people and the officers of Government in regard to the irrigation of their land. The conditions of the ryotwárí settlement in Madras were also considered to call for the exemption, from any fee, of petitions or applications to extend cultivation or relinquish land.

Applications for compensation made under any law relating to the acquisition of property for public purposes were rendered necessary by the acts of the Government, and, consequently, could not justly be subjected to any fee.

The uniform fixed rates of fees chargeable for the service of processes, contemplated by the Bill as introduced, had been abandoned, and it was pro-

posed at present simply to transfer to this Bill, with some slight modification, the provisions of Act XI of 1863, and the Bengal Act V of 1863; the effect of which would be to extend the operation of those provisions to the whole of India and to make process-serving charges payable by means of stamps.

The statistics obtained from the several Local Governments, as to the charges for the service of processes now in force, showed a very striking diversity of practice, and the Committee, though recognizing the soundness of the principle of an uniform rate, were forced to the conclusion that the time for the general adoption of such rate had not yet arrived; that further local enquiry was needed, and a longer notice of the proposed change must be given ere its operation could be safely extended to the whole country.

By section 30 provision was made for compelling the repayment, to the complainant, of the amount of the fee paid by him on he institution of a complaint in the Criminal Court, when such complaint was substantiated and resulted in the conviction of the offender. In the opinion of the Committee, where a complaint resulted in the conviction of the accused person, and the complainant was thereby shown to have sustained a *boná fide* injury, he was entitled to be re-imbursed in the amount which he had been compelled to pay to obtain the Magistrate's interference in his behalf. The policy of levying any fee in cases of this kind was strongly impugned in some parts of the country. Nevertheless, the Committee were agreed that it should be retained at the reduced amount fixed by the Bill, subject to the provision for repayment in certain cases. The fact that this result might be obtained by the operation of the provisions of the Criminal Procedure Code (section 44) had not been overlooked. But, under that provision of the law, the action of the Magistrate was purely discretionary, whereas, in these cases, it was thought that the complainant should recover his disbursement in the prosecution of his charge as a matter of right.

It was proposed to reduce the maximum fee leviable on the institution of suits and appeals from rupees five thousand, the amount fixed by the original Bill, to rupees three thousand. It had been urged in some quarters that, although the return to the principle of a maximum limit conceded a substantial measure of relief, as compared with the unlimited and consequently prohibitory rates of the present law, even rupees five thousand was a heavy sum to be paid ere the Court could be put in motion in regard to claims of very large amount. The limit under Act X of 1862 was rupees two thousand, and the propriety of recurring to that limit was strongly urged. As a sort of compromise, rupees three thousand had been fixed as the maximum fee in the amended Bill.

For his own part he could not say that he concurred as to the propriety or expediency of this conclusion. Its effect was to place all claims, the amount or value of which exceeded rupees 1,05,000, on the same footing, which was inconsistent with the principle of making suits of large amount bear their fair share of taxation.

He had already adverted cursorily to the change proposed in the case of probates and letters of administration. The rates fixed by the Bill as introduced were in general accordance with the provisions of the English law. It was thought, however, that the distinction there made between these two classes of instruments was not only unsupported by, but was altogether opposed to, equitable considerations. The levy of a higher rate of duty upon letters of administration than upon probates, was equivalent to the imposition of a heavier tax upon the property of a person who had died intestate, than was leviable on the property of a person who had left a will; and this, in effect, constituted the infliction of a penalty upon the innocent inheritor of the former class of property for the negligence of his predecessor, although, presumably, such heir had already suffered to some extent through this neglect. On these considerations the Committee rejected the English scale as a model for the adjustment of these duties, and proposed the substitution of an even rate of two per cent. on the amount of the property affected by the probate or letters or certificates of administration That rate represented, approximately, the average of the sliding scale projected in the original Bill, and was moreover the same as the present income-tax rate. A tax upon instruments of this description was in fact of the nature of an income-tax, and one moreover of the least objectionable kind.

The third or repealing schedule of the amended Bill had been greatly enlarged, the provisions of the enactments or portions of enactments which it was proposed to repeal being transferred to the Bill, so as to bring the entire law regarding fees leviable in judicial proceedings into one Act. The Bill, with the further amendments which he was about to propose, would effect a thorough consolidation of the law on this subject.

The original Bill provided for the entire repeal of Act XXVI of 1867. That Act exempted, by a special rule, any person who had been enrolled as an advocate of a High Court from the obligation of presenting a written authority empowering him to act in any Court. He stated, as the reason for discontinuing that rule, that such a provision, relating as it did to procedure and constituting in fact a modification of the provisions of the Code of Civil Procedure, was quite out of place in, and foreign to, an enactment on the

subject of Court fees. The Committee, whilst entirely recognizing the correctness of that view, held that, although that consideration justified the omission of such a provision from the Bill, as there was no reason for disallowing the exemption on other grounds, the existing law on this matter should be retained; and that so much of Act XXVI of 1867 as related to this subject should continue in force. The effect of this proposal was to constitute the provision referred to a special enactment for continuing the exemption in favour of the enrolled advocates of any High Court.

He had now explained all the material changes and additions that had been suggested. On the report being taken into consideration, he would proceed to move the adoption of the further amendments of which he had given notice.

The Hon'ble SIR RICHARD TEMPLE said that section 7, in respect to the valuation of land forming the subject of suits, provided that, in permanently settled estates, the value of the land should be assumed at ten times that of the Government revenue; that in estates not permanently settled, the value of the land should be assumed at five times the revenue; and, thirdly, that in estates which were not settled at all, where the ryot did not pay revenue at all, the value should be assumed at fifteen times the nett profits. He thought that the operation of these clauses of section 7 would lead to under-valuation, and sometimes to unjust valuation, of certain classes of estates which existed more or less in every province of India; for there were some estates which, though not exactly Inám, or free from the payment of revenue, nevertheless were subject, either to the payment of a lump-sum in the nature of a quit-rent, or to the payment of rates very much lower than the ordinary rates of revenue. Such estates would, under the Bill, be valued at fifteen times the nett profits. That would be found objectionable. He proposed to remedy it by adding to clause 5, paragraph *(c)*, of this section, the following words:—

"or is otherwise exempt from the ordinary rates of revenue."

That, he believed, would rectify the defect which had been brought to his notice.

The Hon'ble MR. TAYLOR said that what had just been stated by Sir Richard Temple merely confirmed the explanation which Mr. Cockerell had given of the meaning of the word "Inám" in the Madras and Bombay Presidencies: it merely explained in greater detail the meaning of that term. An Inámdár paid a quit-rent, which constituted a certain proportion of the ordinary assessment.

The Hon'ble SIR RICHARD TEMPLE said that, in many parts of India, the signification of the word 'Inám' would be doubtful; in some places it would mean land altogether exempt from the payment of revenue.

The Hon'ble MR. COCKERELL said that it seemed to him that there was some inconvenience in considering amendments of which the Council had had

no notice. It struck him that the words employed by the Hon'ble Mover of the amendment were so vague as to convey no definite idea of the description of land to which they were intended to apply.

The term Inám was very generally understood and had an extensive application in the Madras and Bombay Presidencies, but it was by no means clear in his (MR. COCKERELL'S) opinion to what class of tenures his hon'ble friend's proposed amendment was intended to apply.

His Excellency THE COMMANDER-IN-CHIEF said that he would bring to the notice of His Excellency the President that this Bill, as now presented to the Council, came before it in a very inconvenient shape. There were several amendments, which involved not only matters of detail of considerable importance, but also matters of principle. The amendment just moved also seemed to present considerable difficulty. Sir Richard Temple attributed great importance to the amendment, and Mr. Cockerell, who was in charge of the Bill, said that the words appeared so vague, that he could not accept it. Under these circumstances, it was almost impossible for the Council to proceed with the consideration of the Bill in its present shape, and it would be very convenient if the Bill and the amendments proposed were referred back to the Select Committee with the view of their presenting a further report.

The Hon'ble SIR RICHARD TEMPLE supported the suggestion of His Excellency the Commander-in-Chief.

The Hon'ble MR. STEPHEN said that, owing to the temporary absence of Sir Richard Temple, he was not appointed a member of the Select Committee, and the Committee had therefore lost the advantage of the valuable suggestions which they would no doubt have received if the Financial Member had been present. It would be convenient that the Bill should be recommitted, and that Sir Richard Temple should be added to the Select Committee.

His Excellency THE PRESIDENT said that he thought that it would further the convenience of the Council if the Bill was recommitted. It would be better that the Select Committee should take the proposed amendments into consideration, and submit a further report for the consideration of the Council.

His Excellency THE COMMANDER-IN-CHIEF then moved that the Bill be referred back to the Select Committee with instructions to submit a further report within a week.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN moved that the Hon'ble Sir Richard Temple be added to the Select Committee.

The Motion was put and agreed to.

PRISONS BILL.

The Hon'ble MR. STEPHEN introduced the Bill to amend the law relating to prisons in the Panjáb and the Provinces under the immediate administration of the Government of India, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that he thought that he need not occupy the Council to any extent in introducing this Bill, but he would state generally what its nature was. The operation of the Bill in the first place was confined to the Panjáb, Oudh, the Central Provinces and British Burma. He thought that, when the matter was referred to a Select Committee, they would probably take into consideration whether or not it might not, with considerable advantage, be made to apply to some of the other Provinces, especially the North-Western Provinces. The occasion on which the Bill was brought in was, that it was found that, in carrying out proper discipline in some of the prisons in the Panjáb, there was considerable difficulty arising from the absence of any law enabling the Lieutenant Governor of the Panjáb to issue rules for the maintenance of discipline, and to provide penalties for their breach. The Bengal Regulation II of 1834, section 7, authorised the Governor General in Council to introduce a system of prison-discipline, but there was no power to prescribe penalties for its infraction, and the Penal Code did not provide for such offences as the abetment, by prison-officers, of violations of prison-rules. Moreover, the power in question clearly did not apply to the Panjáb: there was some doubt as to its application to Oudh and the Central Provinces; and, as regards Burma, it seemed to extend only to the Arakan Division. The difficulties experienced in the Panjáb would apply equally to other Provinces in India, and it would be for the Select Committee to say whether the local extent of the Bill should not be considerably enlarged. The Lieutenant Governor of the North-Western Provinces had expressed an opinion that in his Province no change was required. MR. STEPHEN, however, felt considerable doubt whether this opinion was not founded upon a misapprehension as to the state of the law. With regard to the substance of the Bill he need not at the present moment say much; it was principally taken from the Prison Rules actually in force in different parts of the country, and from the Act of Parliament (28 and 29 Vic., cap. 126) relating to the subject. The Bill consisted of twelve chapters, the provisions of which were not such as to require any statement from him, and he might observe that all of them referred to matters which must necessarily arise in the administration of all Prisons, wherever they might be situated. Local experience would add considerably to the knowledge of the subject, and he hoped that the Committee would obtain full information from the local authorities. The measure was essentially one of detail.

The Motion was put and agreed to.

EMIGRANTS' REGISTRATION FEE BILL.

The Hon'ble MR. CHAPMAN moved that the Bill to enable the Governor General in Council to increase the fees payable under section 31 of Act No. XIII of 1864 (to consolidate and amend the law relating to the Emigration of Native Labourers) be passed.

The Motion was put and agreed to.

NORTHERN INDIA CANALS AND DRAINAGE BILL.

Colonel the Hon'ble R. STRACHEY moved that the Bill to regulate the construction and maintenance of Public Works for Irrigation, Navigation and Drainage be referred to a Select Committee with instructions to report in a month. He said that the proposal to refer the present Bill to a Select Committee, which he was about to make to the Council, implied that they were asked to accept the principle of the measure.

In the present case it was, he thought, the more necessary to give some explanation of the principles that had governed the measure now before the Council, because it, in fact, for the first time proposed to declare and fix in an authoritative manner many very important matters relating to the practice of irrigation in Upper India. These had, till now, been left to be dealt with in a discretionary way, in accordance with certain customs that had grown up and had been generally recognized as proper, but in many cases not under any legislative sanction.

The first point to which he would refer was the declaration contained in the preamble of the Bill, that the property of the water, &c., in India was vested in the State, but subject to rights acquired by usage or grant. This was the view that had been, he thought he might say universally, accepted by the best authorities on such subjects; and, as Mr. Maine stated, it was in conformity with the custom of Europe in those countries in which irrigation was practised. There could be no question, however, that private rights had in many cases been acquired, and there was nothing in the Bill that tended to question or disturb them, excepting under those circumstances in which private rights must always give way; that was, when the public advantage rendered it necessary to extinguish them. In such a case, of course, it was quite essential that full compensation should be given to any individual who suffered from the deprivation of an established private right in a water-supply, and one portion of the Bill was specially designed to deal with these cases.

The Bill, so far as it related to irrigation-works, proceeded, then, on the presumption that the water appropriated was the exclusive property of the

State; it being understood that, when any previous private rights had existed in the water-supply, they had been extinguished, proper compensation having at the same time been given. The canals referred to were consequently only those constructed by the Government at the public expense, and the water-courses were only those fed by such canals; that was, with water which was exclusively the property of the State.

Before proceeding further to comment on the details of the measure, it would be convenient if he (COLONEL STRACHEY) said a few words as to the general position which the Government accepted, in carrying out irrigation-works, in relation both to the general community of tax-payers and the particular community for the special benefit of which the works were constructed. The water, as already said, had become the exclusive property of the State. But, in the nature of the case, this property could only be utilized in one way, and in a special locality. It was apparent, therefore, that the State could only act in the management of the property as a trustee for the community residing in this locality, and that this community in fact possessed, in its collective form, the right to enjoy whatever advantages could be obtained from the water. This indicated the first obligation on the Government in relation to canal-management, that the water should be, as far as was practicable, so distributed as to give the greatest general benefit to the agricultural population in the districts to which it could be taken. This distribution, however, should be so regulated as to produce on the whole the best results in the aggregate; and it might quite possibly be necessary to limit the sub-division of the water, or the extension of its use, so as to avoid waste, which, otherwise, must arise to an objectionable amount. Further, it was to all persons who might benefit by the use of the land that could be irrigated, that attention must be paid, whether they were proprietors or only occupiers.

Next, it appeared that the Government undertook the works either with funds supplied from the general revenues of the country, or with money borrowed on the general credit of the country. For the use of these funds, it was clear that the particular part of the community that benefited by the works should make a suitable contribution, in the shape of interest and profit, to the general revenues. The precise amount of this contribution it would not be easy to define, but it should apparently be sufficient to cover the direct outlay of the State, in connexion with any loan specially entered into to admit of the works being carried out, and should not be in excess of the sum which could be paid without placing the locality

benefited by the works in a worse position, as regarded the aggregate demands made upon it by the State, than that in which other districts were placed. The State might properly assist any section of the community in obtaining special advantages, subject to the condition that the ultimate burdens on all classes of the tax-paying community might as nearly as possible be equalized.

He (COLONEL STRACHEY) was aware that this did not give a very valuable practical criterion of the limits that should be placed to the charges made by the State for the use of irrigation-works constructed at the public cost and risk. But it at all events indicated that the idea of working such undertakings so as to give the greatest possible mercantile profit, was not to be accepted without many large reservations. On the whole, however, there was no great risk of the Government ever attempting to strain its powers of extracting too large profits from irrigation-works. Moderate charges, with a wide diffusion of the benefits of irrigation, would certainly give the results which would be most satisfactory to the Government and the people, and be most conducive to such financial success as the conditions of the undertakings required.

He would now pass on to consider some of the principal provisions of the Bill, on which comments seemed to be desirable.

The first point that might be noticed was the system under which the powers given by the Bill were to be exercised. On this, there had been some misapprehension, arising, no doubt, from the assumption that, in many cases, these powers would be vested in Engineers who had not the sort of qualifications that fitted them for dealing with questions requiring a judicial or quasi-judicial method of treatment. The reply to such an objection was simple. There was no part of the law of this country the administration of which was not left to the officers to be selected for the purpose by the Executive Government. The power and responsibility of appointing proper officers was left to the Government, and there was no greater reason for fettering this responsibility in the case with which the Council was now concerned than in any other. The powers under this Bill, if it became law, would be entrusted only to such persons as the Local Government thought qualified to exercise them; and it would be an obvious duty of those Governments to take all needful precautions in making the selection. It would naturally become a part of a properly regulated system of canal-management, as of the administration of civil or criminal justice, to prescribe certain qualifications as essential before officers were vested with certain powers. The exercise of all powers under this Bill would be subject to suitable control by superior authority; and whatever precautions were deemed necessary to secure

regularity and prevent oppressive action of individuals might, and no doubt would, be applied. So far as the Bill extended the criminal law, the rules of criminal procedure would still apply to the administration of such law, and in this respect the Bill would not in any way alter or diminish the checks against the improper exercise of authority.

The objection taken in some quarters to giving canal engineers any administrative functions or powers was one to which he (COLONEL STRACHEY) need not refer at much length.

It was natural that there should be differences of opinion on the subject of canal-administration, and this was one of the moot points. The fact, however, remained, that the experience of the past thirty or forty years had developed the existing system, which the responsible Executive Governments were not at all disposed to set aside in a summary way. The tendency of late years had been to make the canal-management more, and not less, separate from that of the ordinary land-revenues, and it seemed to him that this was a necessary consequence of improved administration, which, in all branches of the public service, tended to develop more completely the distribution of labour and the formation of special services. He had little doubt that the remedy for the evils, which to some extent, no doubt, were real, seen by the opponents of the present system of canal-administration, was to be found in strengthening and improving the existing administration, and not in destroying it and handing over the duties to the district officers. Personally, he (COLONEL STRACHEY) was inclined to think that a greater separation of the engineering and fiscal and administrative duties of the canal-administration would be beneficial, and would hereafter be adopted; but it would be quite impossible to introduce any sudden changes of system without very great inconvenience. So far as the present Bill was concerned, it sufficed to say that it did not enter upon questions of this sort at all. It merely contemplated the necessity for certain things being done, and gave powers for their being done by the proper officers, leaving it entirely to the Executive Government to determine who those officers should be.

The second chapter of the Bill dealt with the procedure under which private rights in a water-supply might be taken possession of. The whole of the proceedings were to be taken by the Collector, an appeal being allowed to the higher Revenue-authorities, and the compensation would be given partly by a revision of the revenue of land deprived of the means of irrigation, to be made by the Collector in the ordinary manner, and partly by a money-payment, all money-compensation being settled in the way in which compensation was

given when land was taken for public purposes. The proposed provisions had been generally assented to, the objections being confined to matters of detail.

The third chapter of the Bill dealt with the administrative powers of Canal-officers. In respect to these, the differences of opinion were also almost entirely confined to points of detail. On one subject only of any special importance had objections been raised, and this was the power of stopping the admission of water into water-courses. There had, he (COLONEL STRACHEY) thought, been some misconception as to the precise scope of the provisions of the Bill that referred to this. All that the Bill declared was that, in certain cases, the Canal-officer might stop the supply of water in water-courses without giving rise to any claim for reduction of the charges that would otherwise have been made. It was, as it seemed to him, essential for the canal-administration to have the most complete discretion in dealing with the water-supply in Government canals, as was deemed most suitable, whether for the proper distribution of the water, or to secure the works against accident. This must be an implied condition when water was supplied to any individual, and it was specially provided for in a subsequent part of the Bill (section 66), in which it was declared that no claim for compensation would be admitted against the Government for what might be termed unavoidable stoppages of the water; and that all that would be done in such cases was to remit the water-rate that would otherwise have been chargeable.

Section 43, which authorized the stoppage of water in case of certain breaches of discipline as they might be termed, waste of water, and refusal to allow water-courses to be dealt with in conformity with the law, merely said that, in those cases, the claims of Government for payment of water-rates might be enforced as though the stoppage had not taken place. It was not intended to relinquish in any way the full power of control over the water, which, as he had said, must be kept intact; but merely to declare what would be the result of a stoppage of water made under certain circumstances. The result of this section (43), which gave power to stop the water in certain cases, and of the other section (66), which declared that no compensation should be claimable in certain other cases, would be to leave it open to a person who was deprived of his water, otherwise than under those sections, to claim compensation for any injury he received by such stoppage. This appeared to give quite a sufficient safeguard against the arbitrary exercise of a power which it was certainly necessary to retain, and which would remain even if section 43 were removed from the Bill.

A desire had been expressed by the Government of the North-Western Provinces that power should be given to the Government to obtain possession

of water-courses supplied from Government canals which are the property of private persons, when it is considered desirable for the general advantages of the irrigating community that this should be done. The experience of the canals in those provinces had shown that such a power might be necessary. It might happen that a water-course was constructed by a person who had only a temporary interest in the land which it was intended to supply, or that such person had parted with his interest in the land, and thus only kept the water-course as a middleman between the Government which supplied the water and the cultivator who used it. This state of things was inconvenient in many ways. The remedy that was proposed was to extend the power given under the Bill, as it now stands, for taking land for the construction of new private water-courses—a power evidently necessary and proper—so as to make it include the taking of an existing water-course. In such a case compensation would, of course, have to be given to the former possessor of the water-course at the expense of the person to whom the water-course was transferred. This modification of the Bill would be submitted for the consideration of the Committee.

The next chapter of the Bill, the fourth, was that which had led to the most discussion, and which had a special interest to the general community, as it declared the manner in which payment was to be made for the use of canal-water. There were two important alterations of the existing practice proposed in this chapter, to which it would be right that he should direct the special attention of the Council.

The system of charging for canal-water, at the present time in force in the Government canals of Upper India, was entirely one of voluntary sale. Certain acreage rates were fixed for the ordinary crops raised, which a cultivator had to pay if he used the water, it being left entirely optional whether he did this or not. The Canal-officer only dealt with the occupier of the land, and he alone was responsible for the payment of the water-rate.

The result of this system, combined with the fact that the water-rates had been fixed at a very low rate, was, that the rents of canal-irrigated land were found to have risen considerably above those of unirrigated lands, showing that, in truth, the proprietor had, to an important extent, benefited by the increased production due to the irrigation. Speaking in general terms, it might be said that the average water-rate charged to the cultivator by the Canal Department being about two rupees per acre, the rents, after meeting this charge, had risen about two rupees per acre. This advantage was, of course, obtained by the owner of irrigated land altogether in consequence of the outlay of the State funds on the canals. In some cases the owner would,

no doubt, have assisted in the construction of the water-courses which brought the water from the Government distributing channels to the land. But this was not always the case, and, anyhow, the largest part of the increase of the rents of irrigated land might be safely said to be an increment not due to any outlay or exertion on the part of the owner, but to the application of Government capital to the construction of the canals.

Under the present system, the owner was left in possession of the whole of this increase of his rents until a revision of the land-revenue took place, if, indeed, it was subject to revision; then, the Government, under the ordinary revenue-law, took a share of the rents, and thus indirectly took a part of the advantage due to the irrigation.

The first change in this system which the Bill contemplated was, that the Government would be authorized to charge directly a water-rate, not only on the occupier of irrigated land, but also on the owner of it. The Government would do this in its position of canal-proprietor, which it was intended hereafter to distinguish clearly from the position in virtue of which it shared in the rents of land in the form of land-revenue. A little reflection would, he (COLONEL STRACHEY) thought, show that there was exactly the same justification for the Government charging a water-rate on the owner of land, as there was for charging it on the occupier. He who benefited should pay. If both tenant and landlord benefited, both should pay.

The propriety of some such general plan as this was admitted by all the authorities that were consulted, and, in the revision of the land-revenue which was now going on in the Panjáb, a system had been actually adopted on the recommendation of Mr. Prinsep, which was very little different from what he had just explained. A somewhat different plan, leading, however, to very similar results, had been suggested some years ago by Sir William Muir. Where difference of opinion had arisen, it was entirely in respect to the manner of dealing with what he had spoken of as the landlord's water-rate in relation to the land-revenue, which, under the existing system, had become to some extent confounded; the distinction between the position of the Government as canal-owner, and as sharer in the rents of the land, not having been properly kept in view, under the practice that had arisen in the Upper Provinces, in making charges for canal-water.

The object of the Bill had in this respect been to provide that a canal water-rate should be assessed on the owner of irrigated land at a fairly moderate amount, in such a manner as to avoid all interference with the prac-

tice under which the land-revenue was now assessed and realized, so that the land-revenue should continue to be regulated in accordance with existing custom. The necessity for providing for the case of lands on which the land-revenue assessment now virtually included what would be a landlord's water-rate, would require attention, but there was nothing to indicate that the intention he had above stated might not be carried out with perfect facility.

Before passing on from this part of the subject, he (COLONEL STRACHEY) would explain that it was no doubt true that the Government could secure all the return it could properly desire to obtain from its irrigation-canals, by a single water-rate charged either on the occupier alone, or the owner of the land alone. But there were great practical objections to either of these courses. *First*, the charge was now virtually divided, and the system under which it was so divided had continued for many years, and had grown up and become the established custom of the irrigated districts of Upper India. *Second*, if the whole charge were placed on the owner of the land, and the entire responsibility of payment rested on him, it would necessarily follow that he must have a control over the water and its distribution. This would involve a power of interference with the cultivator in the crops grown by him, for the nature of the crop would depend on the supply of water. Such an interference was clearly objectionable, to say the least of it; and, in the case of tenants having occupancy-rights, it could not be tolerated. *Third*, if the whole charge were placed on the occupier, it would force the party least able to do so to advance the whole sum payable to the Government for the water-rates, and the occupier of the land would commonly be in a position in which he would not be able to pass on to the owner of the land the full and proper proportion of the charge which the owner should in equity bear.

On the whole, in this, as in many other matters of administrative practice, the safest and best course to follow was to work on the existing system as far as practicable, introducing such modifications as were necessary to remove defects as they arose. The Bill in these respects was permissive, and left a full power of selection to the Executive Government, among several plans of charging for the water, that were all equitable and might be found suitable, one in one place and one in another.

He (COLONEL STRACHEY) should not omit to notice that the existing system of charging for irrigation in the North-Western Provinces and the Panjáb virtually gave the advantages of irrigation to the proprietors of estates on which the land-revenue was fixed permanently, or in which the land-revenue

was alienated, without any charge. In these cases the power of adding to the land-revenue on the revision of the settlement could not operate, and this class of proprietors might often be placed in the position of having their rents doubled or still further increased, without any corresponding contribution on their parts, by the results of works for which the general body of tax-payers had paid originally, and for the maintenance of which they continued to pay year by year. It was manifestly monstrous that the result of a permanent settlement, or of an alienation of the land-revenue of an estate, should indirectly be that the proprietor should receive, at the entire expense of the general body of taxpayers, the great advantages of irrigation. The Bill, as framed, would give a complete remedy for this anomaly.

The second important change which the Bill proposed was to permit of a compulsory rating of land which was irrigable from a canal, but not irrigated, if, after the lapse of a certain period, the nett income was not sufficient to cover the charge for interest on the capital expended on the works.

The object of this part of the Bill was evident, and all that he need say on the subject was to explain more fully the considerations which had appeared to justify the proposal and to meet the objections that had been made to it.

The events of the last few months would, he should imagine, have satisfied every one in the Council that the greatest caution would be necessary in carrying out the extensive systems of public works on which the Government had recently embarked. The financial consequences depending on the expenditure of the very large sums of borrowed money that would be applied to the irrigation-works and railways which the Government was about to undertake, were extremely serious, and financial disaster and collapse of a very alarming character might readily follow an inconsiderate line of action in such operations. The necessity for giving attention to these financial considerations could not be too strongly insisted on.

The character of the public administration in India tended, he ventured to think, to exalt unduly administrative requirements at the expense of financial possibilities. It was the natural, and almost the necessary, result of a Government like that of the British in India, to be oppressed, if he might use the word, with a sense of the obligation to carry out moral and material improvements, and it was to this really healthy tendency that the excellence of our rule—for it was in all essentials excellent—was to be attributed. But the great body of administrative officers was not concerned in any important degree with the duty of finding the means for meeting the necessary cost of the measures

they proposed; nor was there, in the form of our administration, any corrective or compensating check to this. The great body of the tax-payers was not able to influence in any way the financial arrangements of the Government. But more than this, there was hardly any real or effectual criticism brought to bear on those arrangements from without, and the financial administration had been left to contend with a pressure for supplying the means of improvement which it had too often found difficult to resist, though the consequences should be serious ultimate embarrassment.

Perhaps he (COLONEL STRACHEY) might feel rather more than others the weight of such a responsibility as that of which he had spoken. He had for many years past advocated the policy of extending, within the bounds of prudence, the means of irrigation to all parts of India where there was danger from drought, and there were very few parts of the country to which this description would not apply. He had strongly supported the proposal that the needful funds for the construction of these works should be obtained by borrowing, and he had affirmed that, with due care, there need be no cause for anxiety as to the financial consequences of following this course. He felt, therefore, that, so far as his own voice had had any influence in bringing about the acceptance of the policy that he had advocated, he specially shared in the responsibility that rested on the administration of the Irrigation Department, that the great operations which they had in hand should be carried out to completion without detriment to the credit of the Government. It was in this sense that he personally claimed attention to the important aspect of the question of the extension of irrigation to which he had just been alluding, and it was in this sense that the Government of India had deemed it necessary to take special precautions to provide against possible future difficulties arising from the obligations it accepted in applying these very large sums to the protection and improvement of the country by means of irrigation-works.

If the outlay on the works to which he had referred on a former occasion, as now contemplated in the Panjáb, North-Western Provinces and Oudh, were completed in eight or ten years, the Government would, at the end of that period, be liable to a yearly charge for interest of not less than £600,000, and a yearly charge of at least equal amount for maintenance and management; in all, nearly one and a quarter millions sterling. And this, it must be remembered, represented the liabilities on a part only of the undertakings on which the Government had embarked. Very large works were in progress in Bengal, and very large projects had been prepared, and only awaited a final removal of financial doubts to admit of their immediate commencement. In Bom-

bay the position was the same, and Madras also would, without doubt, add to the drain in an important degree. He need not attempt to estimate in precise figures the full extent of the whole of the liabilities which were thus being permitted to arise, but it was certain that they would amount to an annual charge of several millions sterling.

The Goverment of India had accepted the responsibility of carrying out to its legitimate end the policy of providing this country with the best, nay the only, security that could be obtained against the recurrence of those terrific calamities in the form of general famine, produced by general drought. But in doing this it was bound so to take its measures as to prevent the contemplated benefits turning out causes of injury by reason of financial disorder arising from them.

In thus dwelling on the necessity for caution in prosecuting these works, he would distinctly guard himself against being understood to suggest that there was reason to think that they were likely to prove financially unsuccessful. He had no such fear. But as a prudent banker required certain forms to be complied with, and certain securities to be given, in dealing with his most trusted customer, and as, in the great majority of cases, such forms and securities might not be found to have been really important causes of the final satisfactory settlement of accounts; so the State, in entering on great financial operations, would do well to satisfy the community from which it derived the funds to be laid out, that there was in fact a substantial source from which the liabilities of the State in respect to its loans could without doubt be made good, however firm its own convictions might be of the prudence of its investments.

When considering the probable consequences of the works they were now about to undertake, it was proper to expect that the same general results would ensue that had been shown by actual experience to follow the prosecution of like works in past time. The main feature in the financial working of these undertakings had always been that a certain length of time had been required to develop the irrigation to an extent which made it properly remunerative. As to the end, there was no cause for anxiety; but an intermediate period would almost certainly occur, in which a heavy charge would have to be met from the general resources of the State on account of any new works. It was hoped that, under the improved system of management which they might now hope to secure, and in the light of the strict financial returns which would be an essential part of any satisfactory system, the financial operation of the works would receive closer attention than before, and causes of delay in the extension of the irrigation, or

of failure in realizing a proper income, which were removable, might be ascertained and removed. But, after all possible precautions were taken, it could not be at all certainly hoped that a serious charge might not fall on the revenues in consequence of the new works, and it was necessary to consider thoroughly how such charges, if they arose, were to be dealt with.

It was impossible to overrate the importance to the Government of maintaining its credit on an indisputable footing, when it entered on the course of borrowing which was necessarily involved in the operations which it had been recently determined to carry out with a view to the extension of irrigation-works and railways in India. The power of the Government to continue in the course of improvement on which it had embarked, was directly and essentially dependent on the solidity of its credit. If money could not be got cheap, the Government must soon check its operations. Everything which depressed the credit of the Government acted directly as an obstruction to progress; everything that raised its credit facilitated progress. The Government considered that, among the methods by which its credit might be sustained, a very important one was to place a direct liability on those interests which benefited by irrigation-works, to provide any sum which might, after a reasonable period had elapsed, be found to be required to supply the funds necessary to discharge the interest on the capital by means of which the works were carried out, if not to pay off the capital-debt itself. The precise measures by which this end was to be attained would of course require careful consideration, and the proposals that had been made in the present Bill were designed to give the Executive Government the powers which it might be necessary to exercise to secure the object that had just been explained.

The first remark that suggested itself in connection with this discussion—and it was a very obvious one—was that, if the Government carried out works such as these with borrowed money, the burden that might arise must be borne somehow. The real question at issue, therefore, was, should this burden be left to fall on the whole community, and should the form of its incidence be left to be determined, from time to time, as the financial circumstances of the day required, or should it be placed specifically on that section of the community in whose behalf the works were constructed, in a shape now to be settled once for all? Should we, in short, postpone, till the necessity for action arose, all consideration of the means which we should take for meeting the obligations that were incurred, or should we now assign a specific security equitably adjusted?

The Government of India came to the conclusion that the last was, without doubt, the proper course to follow, if it were possible; and the general

plan that was proposed in the Bill would, it was believed, give a satisfactory solution of the problem, when it was properly guarded and explained.

It was always a somewhat dangerous thing to argue from analogies which were necessarily more or less incomplete. In the present case, when we sought an analogy in English practice, we were met by the wide difference of the conditions under which public works for the general improvement of a district were undertaken there and in India. The common argument, that engagements entered into with the consent of the majority of the class interested should be held to bind the minority, could have no operation in India in relation to works such as we now were speaking of. The consent of the persons interested could not in reality be obtained in a form that would give it the slightest real value.

On the other hand, the mere fact that a given numerical majority of the persons for whose benefit works were undertaken had not specifically consented to their execution, could not at all affect the real equity of any arrangement under which such works might be paid for. So long as the essential considerations were respected, which would have guided an intelligent community thoroughly understanding its own interests and able to protect them, the circumstance that the State had acted authoritatively in behalf of a backward community could not make unjust that which otherwise would have been just. The Government in this country had extraordinary responsibilities placed upon it, arising from its extraordinary relation to the people of the country. Very frequently it was forced to act in behalf of the people, or of a section of the people, guiding itself as best it might, by considerations of what was due to interests which the people themselves appreciated very imperfectly, or perhaps not at all.

From such considerations, he (COLONEL STRACHEY) concluded that, if the Government took all those precautions that should and would be taken by an advanced community acting in its own behalf, it might, circumstanced as the British Government in India was, without objection regulate the management of works of public improvement in a manner that it was reasonable to suppose might have been agreed to by such an advanced community. And, hence, he concluded that the principle of establishing a local financial responsibility for works which were in their nature exclusively of local interest and value, was perfectly equitable in India as elsewhere.

In proceeding to apply this principle, the main point to attend to was that the burden which was to be imposed should only fall on those who really could benefit by the works. When, therefore, it was proposed that all lands irrigable from a canal should be liable to pay a rate towards the expenses of such a work,

it should be seen that the lands were those which could, in fact, receive substantial benefit, and not those which might perhaps be benefited. It would be easy to guard the power proposed to be taken under the Bill so as to secure this object completely, and it would be his duty to propose to the Committee, if his present motion was carried, such amendments and additions to the clauses as they now stood in the Bill as would effect this in an unmistakable way. He might add that the first intention of the section was what he had stated; but it had been thought that the needful definition of the lands to be charged as irrigable might be left to the Executive Government.

It would further be for consideration whether it might not be desirable to prescribe some form of preliminary enquiry by which the Executive Government might satisfy itself, in a special manner, that all those measures had been taken by the canal-administration, for facilitating the extension of the usefulness of a canal, which should have been taken before recourse was had to a general and compulsory rate on lands irrigable but not irrigated. He might add that the Government contemplated giving additional facilities for the execution of agricultural improvements, by means of what were commonly known in India as tuccavy advances, and one of the classes of work to which such advances might most properly be applied would be the minor water-courses requisite for the introduction of irrigation.

Another point which would be suggested to the Committee for consideration was, whether it might not be expedient, in the event of a compulsory rate being charged on account of any new irrigation-work, to declare that a certain fixed maximum rate of profit should thereafter be prescribed, beyond which the Government charge for that work should not go; so that, if the locality benefited by the works was held to give a practical guarantee for the financial safety of the operations involved, it should, on the other hand, be secured against any charges in excess of what was necessary to cover all obligatory expenditure for maintenance and interest. As it might be argued that, if no guarantee was given against loss, no pledge should be given against raising the charges to any amount that the real value of the water would justify; so it might be said that, if the general tax-paying community were protected from all loss, they should be ready to waive their claims to all extraordinary profits, and the charges should be fixed so as just to cover the actual outlay, including a fair rate of interest on capital, and no more.

The sole intention of the Government was to place the future of these most important works on a thoroughly satisfactory footing, both as regards the

interests of the agricultural community for which they were primarily designed, and the general financial interests of the State, which could not be endangered or injured without immediately affecting injuriously the interests of all classes. The Government would hope that a satisfactory conclusion might be arrived at on the various points which arose in relation to this proposal, and that the objections that had been made to it might be removed by the consideration it would receive from the Committee.

The fifth chapter of the Bill, regarding navigation, called for no special remark.

The chapter which followed, on Drainage, was new. Its provisions were moulded on the same general principles that had been adopted in the preceding parts of the Bill relating to irrigation-works. Compensation would be given when any operation was undertaken for improving the drainage of any district, which involved the diminution of any advantage which had been enjoyed by any one for a period of twelve years, which had been generally agreed to as a suitable term to establish a right that should be respected. It might be said, generally, that all interruptions of the natural drainage of the country were made to the detriment of the community at large, and that any right to maintain such an interruption should not be too easily recognized. Where the public health or advantage required the drainage of land, it appeared to be no more than reasonable that the proprietors of the land should be primarily held responsible for removing the evils, whatever they were. A limit of charge was proposed to be fixed by the Bill, so as to prevent undue burdens being placed on the land for these purposes. Also, a proviso was made that the removal of artificial obstructions to natural drainage should be made at the cost of the persons who caused such obstructions. This met objections that had been made, that the Government should not be able to charge upon landholders the cost of drainage-works, the necessity for which had been caused by the neglect of the Government itself. On such a point there could be no difference of opinion.

The chapter relating to obtaining labour for canal and drainage-works had been generally accepted as suitable and sufficient. It enacted nearly what was the existing practice in the Panjáb. Under its provisions, an obligation was placed on all landholders to supply labourers according to a certain scale to be fixed by the Collector, and on all labourers to give their labour, when required so to do, in accordance with certain rules to be made by the Local Government, payment being made at the full rates in force in the locality. If these obligations were not complied with, the persons concerned might be fined. There was no power given of direct coercion.

The necessity and equity of provisions such as these seemed to him quite beyond dispute. Good government did not consist in breaking down human society into the individual elements of which it was composed, and removing from all men all obligations that might interfere with their personal advantages. A man, whether he were a labourer or a landholder, was a member of a community which could only satisfactorily exist by the mutual co-operation of all its members; and when an agricultural community had become dependent on works of irrigation or drainage or embankments for its very existence, the necessity for providing for the immediate carrying out of works of a certain class in connexion with the main canals or embankments was one which was absolutely paramount.

The eighth chapter only called for notice as containing provisions by which the jurisdiction of the ordinary courts was barred in respect of matters the cognizance of which was specially provided for under the Bill. These matters might be classed as questions relating to the supply of water, the use of canals and the charges of various sorts made by canal-officers, the use of water-courses, and claims for remissions of charges, or for compensation in the cases which were specifically described in the Bill. In all cases provision was made for appeals, and the reserved matters referred to questions of an administrative nature in relation to the canal-water which was exclusively the property of the State, or to those which were, so related to the revenue-administration of the canals or the land as to make it desirable that they should be dealt with by the special Revenue Courts or officers. In this, the analogy of other branches of the revenue-administration had been followed, and he might, he believed, add that the experience of European countries where irrigation was largely practised—Spain and Italy—showed that the propriety of maintaining special tribunals for the cognizance of questions relating to the irrigation of land had been universally recognized.

His Excellency THE COMMANDER-IN-CHIEF said that it was now many years, perhaps indeed more than he cared to count, since, as a member of Government on the other side of India, he was one of what might be called the official minority which pressed on the Government of India and on the Secretary of State the necessity of constructing reproductive works by recourse to other means than those presented by the ordinary resources of the country.

The struggle was a long one, but it was at length pressed to a successful conclusion. Finally the argument prevailed by which the notion was borne home to the Government in this country, to the Council at home, and to the public at large, that for this purpose of reproductive works in India we must

lean on the public credit. But while the minority impressed the value of this policy till at length it came to be triumphant in all quarters, it was not forgotten by them that the public credit would suffer, as so ably explained by his hon'ble friend the mover of the Bill, if means were not taken carefully at the same time to insure financial safety; in short, to extinguish the loans by means of which the reproductive works were to be constructed. Some of the clauses in the Bill before the Council had been designed for such a purpose. This he (SIR W. MANSFIELD) saw with great pleasure. It was evident that, according to the provisions set out for their consideration, Local Governments and Administrations would be required to consider well the necessities of their provinces and districts, with a view to the responsibility imposed on the latter for the expenditure on account of the improvements and works by which they were to profit.

It was but too true that there was a sort of feeling among certain classes of the public, this including not only the ryots and the petty landholders, but even some of our own officers in responsible situations, that there was a kind of bottomless purse, into which all were free to dip their hands at pleasure for local objects, without any local responsibility of reimbursement, this unlimited treasury being what was called the Government.

We could understand the ryot or the petty landholder having this notion of the Sarkár; but it was difficult to comprehend how responsible officers charged with the care of administration, who were aware of the almost infinite demands on the Government, should fall into such errors of reasoning.

Well, this matter seemed to be fairly set right by certain clauses in the Bill. Some alteration in the wording, some modifications, might be required; but the principle according to which these works must be carried out henceforth was described in a manner admitting of no mistake in future.

It could not be too clearly declared that the provinces, the districts, the populations which benefited by the reproductive works must be responsible for the expenditure incurred on account of them, and that this must not be thrown on the country at large or the system of general taxation.

He (SIR W. MANSFIELD) congratulated His Excellency very heartily on the progress made by the policy of reproductive works in India,—a policy which, more than anything else, would tend to great development and prosperity. It was to him a matter of real satisfaction that, at the close of his career in India, he saw that policy triumphant for which in former times he had struggled, and that he was permitted to take a share in affording completeness to it by voting for the measure now submitted to the consideration of the Council.

Major General the Hon'ble SIR HENRY DURAND said that, when permission was asked to bring in this Bill, he adverted briefly to the fact that they had not before them the opinions of the Local Governments upon it, and he would have preferred that the Council should not have entertained the Bill until after those opinions had been laid before it. The Council had since obtained the views of the Local Governments, and he must say that some of them were very hostile to a particular clause of the Bill, which had been made the subject of discussion. He referred to section 56. We had some of the leading men, amongst others Sir William Muir, giving their opinions on that section. Sir William Muir said:—

"*Section* 56 *et seq.*—I earnestly dissent from these sections. The imposition of a rate on lands that might be held open to the benefits of canal-irrigation, but which do not actually share in them, is based on no principle which I can recognize as just and equitable, or (even if practicable) as expedient. If a canal will not prove remunerative by the assessment of those who directly profit thereby, it should not be undertaken at all. If Government makes a mistake, I fail to perceive why third parties, having no special concern or responsibility in the matter, should, any more than their neighbours, be subjected to a cess in order to make good the loss. The demand would create so much discontent, and would be so evidently inequitable, that, even if legalized, I much doubt whether it would ever be put in force: and its effect, if any, would probably be to make the canal advisers of Government less careful in sifting the financial prospects of their designs, because they would have, in the back-ground, the fallacious guarantee of an eventual rating on all the area which they might hold to be open to irrigation from their works."

We had others expressing equally strong opinions hostile to this particular section. The Board of Revenue, composed of able men of the North-Western Provinces, said regarding it:—

"But section 56 is open to very grave objections. It compels the owners of lands adjacent to, but actually deriving no benefit from, a canal to pay water-rate on such land, in order to bring up the proceeds of the water-rate to seven per cent. on the capital expended on the canal, and charges for maintenance, management and working not properly debitable to the revenue-account of the canal. It is notorious that the existing canals run through tracts where they are not wanted.

"Before the canal was made, the land now adjacent to the canal was easily and cheaply irrigated from *kacha* wells, and the advent of the canal has been anything but a boon. The proprietor of such land does not not derive any benefit from the neighbourhood of the canal, any more than his neighbour whose land is not irrigable from the canal. Yet he is to be made to pay, when the other is exempted. The canal may have been constructed at an extravagant outlay. It may have failed to yield a profit to Government from mismanagement, or the entertainment of too expensive a supervising establishment. For all this the proprietor, who is in no way responsible for such results, and who derives no benefit from the canal, is *fined*, for the payment would be simply a fine. The Canal Department must look to economy

in construction, management and maintenance, and to a judiciously adjusted scale of water-rates, and careful administration, to secure a fair profit to Government. We contend that it is most unjust to make the agriculturist pay towards the expenses of a canal from which he positively derives no benefit. The mere fact of his land being irrigable from the canal is immaterial, where it is irrigable by other existing means. If it is not so irrigable, he will irrigate from the canal, especially where his land is close to the canal.

"We think that section 56 should be struck out of the Bill, and with it sections 57 to 60."

There were others, again, equally hostile to it; but he (SIR HENRY DURAND) would not take up the time of the Council by reading their opinions, though some of them were very ably and forcibly expressed. We had also the views of the Panjáb Government, which at one time were extremely adverse to the section; and the Lieutenant Governor of the Panjáb, though he had himself modified his opinion to the following extent, now sent the opinion of the Financial Commissioner, which was extremely opposed to sections 56 to 62 inclusive:—

"The Officiating Financial Commissioner further objects to the provisions of sections 56 to 62, regarding compulsory irrigation-rates: the Lieutenant Governor formerly objected to these provisions; but he has recently, in a letter addressed to the Supreme Government, in the Irrigation Department, withdrawn his opposition, with reference to a proposed modification of the Bill, by which it is ruled the amount leviable from those who do not use canal-water shall never exceed half the full water-rates. His Honour is fully aware of the great advantage which would result from all irrigable lands taking water, but he desires me to state that the adoption of these compulsory provisions renders it all the more necessary, in his opinion, for the Government to be chary of extending canals to tracts largely irrigated from wells."

We had, again, the views of the Chief Commissioner of Oudh, who expressed an opinion as hostile to this particular section of the Bill as did the Financial Commissioner of the Panjáb. He said—

"In an abstract point of view, and apart from the complications of particular provinces, the Chief Commissioner can see no reason for the gratuitous sacrifice of revenue involved in the concession to the proprietor of 'a right to a large share of the increased profits due to the introduction of irrigation by expenditure of public money.' But if it be the pleasure of the Government to make this concession, then the Chief Commissioner thinks it a good reason for adjusting the canal-rates so as to prevent the deficiency which it is proposed to supply by the taxation of irrigable lands. Admitting the necessity for obtaining seven per cent. profit on the outlay on canals, the Chief Commissioner has as yet had no data before him showing that, if the canal-rates are fully assessed, the required amount of profit cannot be raised. The Chief Commissioner would cite the late revision of rates for the Bárí Doáb Canal, as exhibiting the considerations indispensable to the full realization of the revenue due from canals. There is no doubt about a full rate being the form of taxation to which the cultivators of Upper India will most readily assent. The Chief Commissioner feels quite sure that they will not understand a supplementary rate on irrigable land. He holds that the analogy of English circum-

stances spoken of has no existence. It is a very different thing, getting the intelligent assent of English proprietors to the payment of rates in defrayal of the cost of a local improvement; and persuading thousands, or rather millions, of disconnected cultivators, living on a line of country hundreds of miles in length, that it is to their advantage, contrary to old custom, to pay for water which has never reached their fields. There will always be the risk of causing general discontent by the sudden exaction of such an addition to the ordinary fiscal demands. The insertion, therefore, of such a provision into a legislative Act, not professedly a measure of taxation, and not easily repealable, may, the Chief Commissioner fears, lead to practical difficulties, and he ventures to recommend that the subject be further considered, and the necessity for the cess be clearly made out. This will allow of time to test the feeling of parties interested. If this be favourable, no harm will be done; if unfavourable, the degree of its intensity should then be ascertained. The subject would seem to be easily separable from a Bill to amend the administration of the existing canal-law, and to call for the attentive consideration of the revenue-officers."

In the Central Provinces alone, where there was not much experience in these matters, we had an opinion favourable to the principle of the section. SIR HENRY DURAND could not help thinking that the opposition to the policy of this particular clause had been due to the peculiar wording, in this matter, both of the Statement of Objects and Reasons appended to the Bill, and also of the somewhat arbitrary terms in which the section itself was worded. He found that, in the Statement of Objects and Reasons, where it laid down the principle on which the section was based, the principle so laid down was good, and that it could in itself hardly be objected to. It was there stated that—

"The Government constructs irrigation-works out of the funds or on the credit of the general tax-paying community, and, as trustee for that community, it must take the best possible security for the payment, by the districts which are benefited by any canal, of the actual charges to which the State is put by its construction and maintenance. It might be argued that the liability to meet such charges should be extended to the whole tract of country which receives any benefit from the irrigation-works. But it is believed that, under a satisfactory system of management, the needful returns to cover the charges may be obtained from the land which will directly benefit, and it is therefore considered sufficient to limit this liability to the irrigable lands only."

It was rather remarkable that, when you read section 56, you did not find any allusion to what was contained in the Statement of Objects and Reasons, confining the water-rate to lands which will directly benefit:

"56. If, at any time not less than five years after the commencement of irrigation from any canal, the average nett revenue in the three next preceding years, realized by the Government from the use of the water thereof, and including all sources of income dependent on such canal, and deducting all charges for maintenance and management and working properly debitable to the revenue-account of the same, shall not amount to a sum equal to seven per

cent. on the capital expended on the said canal, the Local Government may charge on the lands irrigable by the water of such canal, but not paying any water-rate therefor, such a yearly rate or rates as shall, when added to the nett yearly estimated income, reckoned as aforesaid, produce a total amount, as nearly as may be, equal to seven per cent. on the capital aforesaid."

so that, at the first blush, he (SIR HENRY DURAND) could understand the Local Governments going against this particular section of the Bill; because, whilst there was no uncertainty as to the principle laid down in the Statement of Objects and Reasons, there was nothing to show that, in the section there was a corresponding condition affecting the application of the principle: he could quite understand the alarm of the Local Governments at the section. Then, again, in the Statement of Objects and Reasons the word "district" was used. A district was only an aggregation of villages. It did not always follow that the canal-districts and civil districts were of the same demarcation; nor did it at all follow that the villages which composed either canal or civil districts would all benefit from the construction of a canal. Some might benefit from it; others might benefit partially; some might not benefit at all, and some might even suffer detriment. So that, from the indefinite words used, the Local Governments might well be startled; but he did not think that, after a careful consideration of what the Local Governments had said, they really went against the principle involved. He thought that the financial policy was one which, stated generally, was a principle which would be accepted by every one: the difficulty, and it was the real difficulty, was as to its application. While he was not prepared to say, admitting, as he did, the soundness of the general principle, that that principle was in itself obnoxious to criticism: he was not prepared to say that this Bill, supposing the principle applied as it ought to be, and with some modifications of section 56 as it now stood in the Bill, might not be made a good Bill. If it were not for section 56, hardly any one would deny that the Bill itself was a good Bill: it really did very little more than bring into an improved shape what was now embodied in two or three old Acts and Regulations, and it invested the present practice with legal form. Therefore, excluding that section and some others connected with it, all of which the Hon'ble Mover of the Bill could, he was certain, amend, he thought the Bill was one that should be regarded as unobjectionable. At the same time, there were points in it which he should like the Select Committee carefully to take into consideration, for he was convinced that a good deal of the opposition that had been raised might very easily be remedied. With His Excellency's permission, he would take up those points *seriatim*.

There had been a great deal said as to the powers proposed to be conferred on canal-officers. Now, as to the particular part of the Bill in which certain powers were conferred on the canal-officers, he did not entertain any objection to its provisions; he thought that they were a body of men who would act carefully and well, both in the interests of the country and of the Government; but there were particular sections which might well be brought under the ordinary action of the civil courts. He could see no harm in their complying with the views expressed by some of the Local Governments and their officers who commented on the Bill, so as to alter the venue in proceedings under certain sections: he particularly alluded to sections 19, 21, 53 and 54. Now, all those sections had reference to rents, and he was not quite sure that they were not out of place in a Canal Act. He did not see that there would be any harm in leaving jurisdiction in this respect unshackled to the Revenue Courts. Such a course would not only prove a very great safeguard to the people, but would also operate as a real check on the canal-officers. It was very natural that the civil officers should entertain such a feeling, and he could see no objection to these sections being treated as he proposed, thus giving the canal-officers the assistance of the decisions of independent courts. It was entirely a rent-question. He was informed that, in the re-settlement of rents, which usually followed the settlement of the land-revenue of a district, there was no provision requiring that the rent should bear any proportion to the revenue-rates fixed by a revised settlement. We were, therefore, introducing a new element, and a new element in questions of rent in a Canal Act. He thought that the Revenue Courts should be required to adjudicate on all claims to enhancement of rent, and to settle them as they did similar claims under the Acts which guided them. This was a point which he ventured to recommend to the consideration of the Committee as likely to remove objections to the Bill.

Section 56 was, as previously observed, a more difficult subject for consideration; but if the Council had paid attention to the somewhat lengthy extracts which he had read from the reports of the Local Governments, they would observe that the gist of their objections was founded on the fact of the powers conferred by this Bill for the levy of the water-rate on people who derived no benefit at all. If the rate was limited to lands in no other way irrigable, and which were within the sphere actually irrigated by the canal, there would be less ground for objections on the part of the Local Governments. But, as the Bill was worded, a village might find itself compelled to pay for no advantage received, or it might be required to discard its wells from which its lands were irrigated, and which were sunk at great cost, in order that it might contribute to the financial success of some undertaking of which it was wholly independent.

Although there was a discretion left to the Local Governments as to the compulsory rate, and the action upon that discretion was subject to the control of the Governor General in Council, yet he thought that this point was one which, though guarded in this manner, had moved the Local Governments very much, and which admitted of an easy remedy in Committee; and he was under the impression that it would, coupled with other financial adjuncts which the Hon'ble Mover of the Bill would be able to add, in a great measure remove the objections entertained to the Bill. If he understood the section rightly, taken in connection with section 61, there was nothing to prevent very considerable practical injustice being done to a village, the lands of which were irrigable but not irrigated by, or requiring irrigation from, a canal which might run twenty-five or thirty miles off, and that village might be made to pay towards the general deficit of the work. That he thought should be carefully looked into.

As connected with this subject, he confessed he entertained great doubts as to the policy of section 62, to which he very earnestly asked the attention of the Council. It would be remembered by his Hon'ble colleagues that, with regard to reproductive works, he had urgently recommended that there should be a strict account kept of each separate work, and that its cost and the revenue and profits derived from such works should be laid periodically before the public at the time of the preparation of the Budget. Now, this section appeared to him really to militate against that which he held to be most important; for, although he himself was not of the opinion which he had heard advanced in that room against the construction of public works by loans, on the ground that loans necessarily led to extravagance—an opinion which he thought rather unworthy of a Government to bring against its own prudence and power of control—still he did think that the credit of the Government and of the country was involved in the results of its reproductive works being laid before the public without any jumbling or mixing up of one work with another.

The accounts rendered of separate works should be so clear and clean, that if any capitalist wished to know the outlay on, and the returns and profits from, such works as the Ganges or Jumna Canals, the Soane Canals, the works taken over lately from the Irrigation Company, the Godavery works, or any other reproductive work in any part of India, he should find no difficulty in ascertaining exactly how the account stood. There should be no blending of successful with unsuccessful reproductive works. Therefore he rather thought that these two sections, if they led to anything of the kind, were open to objection; and he

recommended them to the consideration of the Committee, both in a financial and practical point of view.

Then, again, section 67 was to his mind one which required very careful consideration, for it appeared to him that it struck somewhat at the principles which ruled our settlements. The section provided that—

"67. Whenever any land, the owner of which is charged with a water-rate as aforesaid, or the land-revenue payable in respect of which includes an addition on account of the increase of rents or profits due to irrigation from any canal, shall from any cause be deprived of the use of canal-water, such owner shall be entitled to no compensation on account of such deprivation, other than a remission of such water-rate or reduction of such land-revenue.

"No such remission or reduction shall be allowed, unless it be established to the satisfaction of the Collector that the rents or profits receivable by the owner from the said land have been or will probably be reduced, in consequence of such deprivation, by an amount exceeding one-tenth part of the increase of rents or profits, in consideration whereof the said owner shall have been charged with water-rate, or his said land shall have been charged with additional land-revenue."

The question which arose on this was, Why should any revision be made of revenue, because the profits derived from the land were less than at the time of the settlement? If he (SIR HENRY DURAND) understood the principle of our settlement properly, it was that the people took their chance of loss in one direction, by balancing it with the chance of gain in another. A village might lose a certain proportion, say one-fifth, of its settlement-rate by loss of canal-water, but it did not at all follow that everything else might not increase in value; that prices of all kinds, demands for particular produce, the effect of railways, and a great many things might happen to make that settlement not only very just but profitable. That was a sort of section which should be left to the operation of the Revenue Courts, and it need not come into this Bill at all.

In section 68 there was a very considerable power conferred on the ordinary canal-officers, with the view of levying the water-rate where, by percolation of the water from a canal, benefit was conferred on the whole of the land. He was not sure that that was not right. But suppose there was any mischief committed by the percolation? He adverted to this particularly, because, in the sections headed "Drainage," he did not find in the Bill as it stood that, if a village suffered from damage caused by the canal, there was any provision to exempt the agriculturist from the payment of the rate, and the Bill, as it was generally read, proposed to make villages pay for drainage-works rendered necessary by the canal. We were aware that, in some districts, canals

had done injury. Districts had been named to him of which he had no doubt the Hon'ble Mover of the Bill knew—he would instance Muzaffarnagar—in which the effect of the canal running through it was represented to him as having caused serious injury to the soil; it had raised the spring-level of water very much and had produced an immense deal of fever, so that literally, in those parts, the people had suffered most severely; so severely that, sometimes, in a bad year, the greater number of the people of whole villages were on their backs with fever, and the mortality was great. He thought that the drainage-works necessary for remedying these evils did not form a proper charge on those who suffered the injury. The people had derived no benefit, but were involved in lamentable losses and injury, caused by the construction of canals, and to make them pay for drainage under such circumstances appeared to him not right. He thought that the cost of such works was a fair charge against the profits of the work.

He had no objection to the chapter, which had been a good deal discussed, regarding compulsory labour; he had no more objection to that than he had to the powers proposed to be conferred on canal-officers. Compulsory labour was occasionally absolutely necessary for the welfare of the people, and although it might appear a rather arbitrary and harsh measure, yet he was confident that any one who had had experience of canals, the banks of which were, at particular points, liable to be easily broken through, swamping and desolating the country around in a way from which it took months to recover, could not for a moment doubt the advisability of these sections. Consequently, he entirely agreed with them, and, practically, he thought that, provided the Hon'ble Mover of the Bill and his Committee could effect a modification with reference to section 56, such as he (SIR HENRY DURAND) had suggested, the Bill was on the whole a good and necessary Bill, but it required the amendments which he had ventured to recommend to the consideration of the Committee.

The Hon'ble MR. CHAPMAN said that, as at present advised, he objected to the principle of section 56. It seemed to him to contain an ingenious provision for guarding against the effects of errors of construction or of calculation. Now, the estimates of the Department with which Colonel Strachey was connected were not immaculate. The tendency undoubtedly was to under-estimate the cost of construction and over-estimate the probable receipts. He (MR. CHAPMAN) did not see why the public, who derived no direct benefit from the works, should be made to pay for these errors. As well might they call upon the inhabitants of a district through which an unproductive Railway passed to make good the deficit. You said to them "A beneficent Government has constructed this great work by which you will

secure an outlet for your labour and your produce." Their answer would be, "We are the best judges of our own interests, and we consider your Railway a mistake, and leads to no place in which we have any interest."

His (MR. CHAPMAN'S) belief was, that if irrigation-works were only well conceived and executed, there need be no fear about their financial success.

His Excellency THE PRESIDENT said—"I intend to reserve the greater part of what I have to say upon this very important Bill for its future stage, when, after being amended in Committee, it comes up for final consideration in this Council. I will therefore content myself today with expressing an opinion similar to that which is entertained by my honourable friend, Sir Henry Durand, to the effect that a great deal of the objection that has been taken to some of its clauses can be removed by the amendments that will be proposed in Committee.

"Now, the most formidable objection taken to clause 56 is that stated in the remarks of Mr. Reid and Mr. Inglis of the North-Western Provinces.

"They say that 'it compels the owners of lands adjacent to, but actually deriving no benefit from, a canal to pay water-rate on such land, in order to bring up the proceeds of the water-rate to seven per cent. on the capital expended on the canal, and charges for maintenance, management, and working not properly debitable to the revenue-account of the canal.'

"I believe that, by the insertion in the Bill of a proper definition of the word '*irrigable*,' that objection can be entirely swept away.

"I am informed that it is intended to define the word 'irrigable' in this way; that the land irrigable is not irrigated from a canal; that it is cultivated and situated within such a distance of the canal as permits the irrigation of it by natural flow; that the profits of such irrigation shall increase the annual rent and value of the land to an amount equal to the charge that is placed upon it; and that, not only shall all these precautions be taken, but that the canal-officer shall have offered to construct the minor works necessary for 'conveying the water to the said land under section 29, or (if the said occupier or owner shall so prefer) to permit their construction under section 32 or 33, or shall have tendered an advance of money sufficient to provide for the construction of the said works, such advance to be made and to be repayable in conformity with the rules then in force for making and recovering advances of takkavi, or advances for making improvements in land.'

"I am in hopes that, if these definitions are inserted by the Committee in the Bill and adopted by this Council, many of the objections taken will entirely fall to the ground. I believe also that it will be possible to give to all these definitions practical effect.

"It might be said, and I think with truth, that irrigation-works in India cannot be constructed without conferring great benefits upon the whole population of a district, and, speaking generally, without adding increased value to all the lands in the neighbourhood of those works.

"I believe that to be a sound axiom; but it is not the principle that is acted on in this Bill, which is more limited.

"The principle upon which the legislature in England has acted in respect to the prosecution of works of local utility is this—it has always considered it right to charge upon a certain district the repayment of capital and interest, and the cost of maintenance, because it is held that the construction of such works confers extensive advantages upon the whole neighbourhood. But this principle is only found to a limited extent in the Bill now before us, and it will be so guarded, that no people can be made to pay for this water who are not directly benefited thereby, unless their land is actually increased in value, and unless the water is actually brought upon the farm. And, here I think it right to say that, unless such a principle as this guides the future of our great operations of improvement in India, we are likely, at no distant time, to find ourselves in serious difficulty; and I believe that, unless the principle is adopted which was so well described by His Excellency the Commander-in-Chief, unless the whole of our loan-finance—the whole expenditure of a remunerative character for improvements to the land and other like objects in India—is removed from the ordinary finance of the country, you will find that it will be difficult to continue these most necessary works on a scale at all commensurate with the requirements of the country.

"I therefore think that those who argue against this principle argue against that upon which all security for the continuance and certain completion of these works is actually based.

"I will not now take up the time of the Council to go into details in proof of this axiom. On some future occasion it will probably be my duty to do so; but when we see that the cost of the ordinary administration of this country is such as can hardly be defrayed out of ordinary revenue, and, when we look to the increased cost of that administration which improvement must necessarily bring, I say that it must be plain that it is impossible to add indefinitely to our payments of interest in regard to these reproductive works

without dangerously crippling our power in respect to military defence, the administration of justice, the spread of education, and many other objects which are so essential to the safety and progress of the country.

"I hope that these truths are now beginning to be recognized throughout this land, and it behoves us to look upon these questions, not from a provincial or a local point of view, but to ask ourselves the simple question, if these works are to go on, who is to pay for them; and can they go on if their cost is to be defrayed from the ordinary revenue of the country?

"This consideration has certainly not presented itself to the minds of those who object to this Bill.

"It is said that it is unfair that certain persons should pay for certain works; but if they are not to pay, who is to pay?

"There is no unlimited fund at the disposal of the Government of India which is available for such a purpose.

"If a work is not sustained by local resources, it can only be sustained by the contribution of the general tax-payer, and I ask, is it fair or right that works constructed for the exclusive benefit of the people in the Panjáb or the North-West should be paid for out of the pockets of the people of Madras or Bombay?

"It was the early adoption of the principle to which I have been referring that has led to the successful expenditure of the enormous sums which have been borrowed from the State or from private sources, for agricultural, municipal, maritime, and other objects at home; and I do believe that, had it been attempted thirty or forty years ago in England to carry into effect the principle that has hitherto been adopted in India, that is, that the general revenues of the country were to be made liable for works of improvement of a limited and local character, not only would the expenditure on those works have been most extravagant (being conducted without that local control which is so necessary), but that the charge thrown upon the revenues would have been so enormous, that the construction of all such works would have long ago been arrested.

"When it is also said that, because engineers make mistakes, and that errors may be committed in the construction of these works, therefore, the loss occasioned by these errors, and the result of these mistakes, are to be thrown upon the general tax-payers of the country, it seems to me to be an objection that is wholly unsustainable.

"These works are not undertaken on the understanding that mistakes are not to be made; mistakes will occur, but to say that a great principle of this kind is unjust, because occasional mistakes, blunders, and errors may be made by persons occupied in the construction of these works, is, to my mind, an argument that can hardly be deemed serious.

"I believe that, in the interests of the thousands whose life (I may almost say), and certainly whose welfare, depend upon the early completion and construction of these works, this principle ought to be adopted; and I do believe that, when it does come to be thoroughly understood that those localities which are to be most benefited undertake to bear the other tax-payers of the Empire free from burden and cost; when the inhabitants come to understand what the object really is, and that in return they are to be guaranteed by Government that the profit of those works—above that which is absolutely necessary to defray the cost of payment of interest, repayment of capital and maintenance—is to be all their own, they will find that, so far from the present Bill being likely to throw unfair, unnecessary and burdensome charges upon them, it will cause these works to be constructed and completed with far more economy and care than they have been hitherto; that in their construction they will be subjected to much more accurate criticism than they have been before; that the whole claim of the Government in their respect will be greatly limited. I believe that, when people come to consider all these points, they can arrive at no other conclusion than that the principle of the Bill is just and fair, and calculated to secure the speedy completion of the works, and at the same time leave to the proprietors and occupiers of the land a larger portion of the profit.

"I am not surprised that objections are taken to this Bill. Everything that is new is liable to suspicion; but I think that the solid objections which have been made can be removed, and that, on further consideration, it will be found that this Bill, if it be properly worked, will confer lasting and immediate benefit on thousands, by securing to them, at the least possible cost, all the blessings of irrigation."

Colonel the Hon'ble R. STRACHEY said that he wished in reply to offer a very few remarks on some of the comments that had been made by Sir Henry Durand on certain sections of the Bill, which he (COLONEL STRACHEY) thought had been somewhat misunderstood. As to the general questions that had been discussed, he had no wish to add anything, as he considered that the observations of His Excellency had so completely met all the points that had been raised as to make further comment unnecessary.

The first point to which Sir Henry Durand had referred, was the extent of the powers to be given to the canal-officers. His Hon'ble friend had said that the matters proposed to be dealt with under sections 19 and 21, and 53 and 54 of the Bill would have been better left to the ordinary Civil or Revenue Courts, and that it was doubtful whether questions relating to the rent of land should find a place in this Bill. But sections 19 and 21 could not possibly be dealt with except by the Revenue Courts, and the Bill distinctly provided that the whole of the proceedings taken under Part II, in which sections 19 and 21 were, should be before the Collector, whose orders would be liable to appeal in the manner prescribed by the Local Government. The canal-officers would have no share whatever in such proceedings. As to sections 53 and 54, the same general remarks would apply.

As to the propriety of referring in this Bill to questions relating to the rent of irrigated land, the sections 19 and 21 had been specifically approved by the Board of Revenue of the North-Western Provinces. Section 54 was open to more discussion, but the propriety of it was strongly advocated by Mr. Elliott, one of the most able Civil officers employed in settlement-operations in the North-West Provinces.

Next, section 61 was objected to as giving an arbitrary power to group together several canals in reckoning the nett profits which would determine whether a rate might be levied in certain cases on irrigable land not irrigated. But some such power was essential, because the term 'canal' was necessarily very aribitrary, and, in many cases, the irrigation of a district was provided from a number of small works, which might, in fact, be little more than large water-courses, to keep separate accounts of which might be inconvenient or even impracticable.

Section 62 was also noticed as naming the accounts of the local Public Works Department, as affording the standard from which the profits before referred to should be ascertained, and a remark was made by Sir Henry Durand to the effect that the proper standard would be the accounts as audited by the Government of India or its officers. But, as a fact, the local Public Works accounts were drawn up and corrected under the orders of the Governor General in Council, and the system to be followed in keeping the accounts of all irrigation-works would be entirely within the control of the Government of India, so that there would, in fact, be no difference between the local accounts and those of the Government of India.

Objection was taken to section 67 as interfering with the system under which remissions of land-revenue were allowed, which, it was said, should not

be changed by this Bill. But, in fact, the remissions referred to in this section were not remissions of land-revenue, properly so called, but of canal water-rates charged on the owner of land, which, under the existing practice, had become confused with, or combined with, the land-revenue. If an owner's water-rate was to be charged, provision must be made for remitting it in case of failure of the canals. To what extent, if any, modifications of the precise terms of the section as it now stood might be desirable, was a question that might be properly dealt with in Committee; but some such provisions as those which it contained were essential.

The power given under section 68 to rate land not actually irrigated, but situate within a certain distance of the canal, and benefiting by percolation, was noticed as excessive. But the section plainly said that, to admit of the land being charged, the advantage to be derived from the canal must be equivalent to that which would be given by a direct supply of canal-water. This seemed quite sufficient.

The next point noticed had reference to the drainage of lands, and objection was taken that, under the Bill, a proprietor might be required to pay for the removal of evils which were caused by the errors of the Government Engineers, and were directly due to defects in the construction of the canal-works. COLONEL STRACHEY pointed out that the proviso at the end of section 84 distinctly stated that no charge should be made under the Bill for removing obstructions to drainage due to artificial causes, and that the persons who had caused such obstructions should be responsible for their remedy or removal. He added that, although no doubt there were many instances in which the Government works had caused evils of this sort, the main cause of the worst cases was the neglect of the small water-courses, which, not being properly maintained, allowed the escape of water into hollows where it formed swamps of a most objectionable nature.

As to the means of obtaining compensation for injuries done by Government canal-works to adjacent lands, to which allusion had also been made, COLONEL STRACHEY observed, that he supposed that any proprietor placed in such circumstances could bring an action for damages against the Government, though he did not remember ever to have heard that such a thing had been done. But however this was, the present Bill provided a distinct remedy for all such cases. Section 24, read with section 106, provided that, in all cases in which injury was done to land by the escape of water from a canal or drainage-work, or from the failure of any drainage-work, or from the interruption

of the drainage of lands, by canals or drainage-works, should be compensated, as though the loss had been caused by the interruption of a water-supply. Thus, in fact, the present Bill, so far from placing proprietors or occupiers in a worse position than before in these respects, for the first time prescribed a specific remedy for such cases.

The Hon'ble SIR HENRY DURAND asked permission to say that the explanations offered had not satisfied him, and that he would leave the Select Committee to deal with the objections he had raised.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to amend the law relating to prisons in the Panjáb and the Provinces under the immediate administration of the Government of India—The Hon'ble Messrs. Chapman and Cockerell and the Mover.

On the Bill to regulate the consolidation and maintenance of Public Works for Irrigation, Navigation and Drainage—The Hon'ble Mr. Strachey, the Hon'ble Sir R. Temple, and the Hon'ble Messrs. Stephen, Forbes, Chapman and Cockerell and the Mover.

The Council adjourned to Friday, the 25th February 1870.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 18*th February* 1870.

Office Supdt. Govt. Printing.—No. 8296 L. C.—25-2-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 25th February 1870.

PRESENT:

The Hon'ble G. Noble Taylor, Senior Member of the Council, *presiding*.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
Colonel the Hon'ble R. Strachey, C. S. I.
The Hon'ble Francis Steuart Chapman.
The Hon'ble J. R. Bullen Smith.
The Hon'ble F. R. Cockerell.

COURT FEES BILL.

The Hon'ble MR. COCKERELL presented the second Report of the Select Committee on the Bill to provide for the better regulation of Court Fees.

OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill for the repeal of certain obsolete enactments, begged leave to make a few remarks on the principle involved in the Bill, inasmuch as it was part of a general scheme on which he should like to offer a few explanations. So long ago as the year 1797, it was enacted by the Statute 37 Geo. III, c. 142, s. 8, " that all Regulations which shall be issued and framed by the Governor General in Council at Fort William in Bengal, affecting the rights, persons, or property, of the Natives, or of any other individuals who may be amenable to the provincial courts of justice, shall be registered in the Judicial Department, and formed into a regular Code, and printed, with translations, in the country languages, and that the grounds of each Regulation shall be prefixed to it." He (MR. STEPHEN) was sorry to say that, except to a very limited extent, that provision had never been carried into effect. The exception to which he referred was the case of Bombay. The

Bombay Regulations were in 1827 formed into a Code, which had many merits. There was no scheme under the consideration of the Government as ambitious as that which was suggested by the Statute to which he had referred, but the present Bill was part of a scheme for carrying into effect the more modest intention of consolidating and re-arranging the written law of India. The process of consolidation was now thoroughly understood, and had been carried to a considerable extent in England, but its importance here was, if anything, even greater than in England. It might be thought that any extensive scheme of legislation in India required an apology. A great deal had been said of late, both here and in England, on the evils of over-legislation in India, and there could be no doubt that every needless or ill-considered act of legislation was an evil; but he thought that, if the subject were carefully looked into, it would appear that the accusation made against the Indian Government of legislating too much was unjust, although there was some justification for the charge that their legislation was intricate and ill-arranged. Nothing, however, could be more natural than that persons who had not studied the subject carefully should suppose that there was too much of it. When people saw four separate Legislative Councils sitting for a great part of the year and passing a large number of laws relating to every sort of subject, it was natural enough to speak of over-legislation, and to say that it was time that the process should be arrested. With regard to such remarks, there were several matters to be taken into consideration, which people were very likely to overlook. In the first place, it was easy to under-rate the demands of so vast a territory, and in the second place it was still more easy to confound the apparent with the real additions made by legislation to the body of law actually in force. If any one took the trouble to look closely into the matter, he would find that, so far from the whole body of law being rapidly increased by current legislation, a very large proportion of the enactments tended to diminish the number of laws. The work done was rather the adaptation of old laws to fresh circumstances, than the production of new ones. He (Mr. Stephen) could hardly give a better illustration of this than the Court Fees Bill, the second report on which Mr. Cockerell presented this day. That Bill certainly, in one sense, was an addition to the law: it would put one new Act into the statute-book, but it repealed six Acts entirely and thirty others partially, and the consequence was that the effect would be, not to increase, but to diminish, the existing body of law on the matter. The process to which he referred, when thoroughly carried out, would result in this, that all Acts which related to the same subject, at least which related to subjects of importance, would be thrown each into one statute, and the repealed Acts and the enactments by which they were repealed

would be omitted from the collection of statutes. If a distinction were made between Acts of local and Acts of general application, if the Acts which referred to British India generally were put into one collection, and if all those portions which related to separate provinces were separately published, the real extent of the law would be found to be far smaller than was supposed; the law itself would be rendered far more intelligible, and people would no longer be at a loss where to look for the information which they required. The advantages in fact of such an operation would be so great and obvious that he did not think it necessary to dwell on them.

He would now proceed to point out the reasons which made it specially desirable that the task in question should be undertaken. He did not think that the nett amount of the written law of the country was very large—it was rather, he thought, exceedingly small—when you took into consideration the number of provinces to which those laws related, their great extent, and the variety of circumstances in which they were placed. No doubt, however, the absence of an arrangement of the laws was a great evil, and few persons who had not specially directed their attention to the subject, had any idea of the extent of intricacy in which the written law of India was involved. He (MR. STEPHEN) would go into a short detail on this point, with the object of stating, for the information of the Council and of the public, what the actual state of the written law of British India was. The English Government had not enacted any written laws in India with which we need now concern ourselves before 1792, at which time began the Bengal Regulations made by the Governor General in Council. The Madras Regulations made by the Governor of Madras in Council date from 1802; the Bombay Regulations from 1827. Those Regulations applied to the Provinces in which they were made, and were the first of a series of repositories in which the written law of India was contained. They came down in each case to the year 1834. There, therefore, we had three bodies of local law, each separate and independent, affecting respectively the Presidencies of Bengal, Madras and Bombay. But the Bengal Regulations had a wider operation, because, as new Provinces, previously independent, were brought within the Empire, in some instances the Regulations themselves, and in other instances what was called the spirit of the Regulations, was extended to them; and the effect had been that those Regulations not only extended over Bengal, but also, to a somewhat indefinite extent, over the Non-Regulation Provinces.

In 1834, when the Charter of the East India Company was extended for the last time but one, power was given to the Governor General in Council to legislate for the whole of British India, and the power to legislate, which

the Governments of Madras and Bombay previously had, was taken away. The Act of 1834 was the foundation of the present Legislative Council; and from that date to this, although great modifications were introduced in 1853 and 1861, the laws affecting the whole of British India had been passed in this Council. But besides these laws, passed for the whole of British India generally, from 1834 to 1870, a large number were passed by the Legislative Council between 1834 and 1861 for the Presidencies of Bengal, Madras and Bombay, which during that period had no legislative bodies of their own; and therefore we got, besides the three bodies of law already referred to, four sets of Acts,—those relating to the whole of British India, those relating to Bengal, those relating to Madras, and those relating to Bombay, passed by the Governor General of India in Council in his legislative capacity. In 1861 was passed the Indian Councils' Act, under the authority of which legislatures were established for Bengal, Madras and Bombay. The Governor General in Council, sitting as a legislative body, continued, and had since continued, to legislate for the whole of British India; but, with some exceptions, the Governor General's Council had not legislated specially for Bengal, Madras or Bombay. On the other hand, it had legislated for the North-Western Provinces, and for the Non-Regulation Provinces, which included the Panjáb, Oudh, the Central Provinces and British Burma. In the interval between 1834 and 1861, the Regulations made for these Non-Regulation Provinces were made by the Governor General in Council acting in his executive capacity. These executive orders did not appear in any statute-book. The 25th section of the Indian Councils' Act recited doubts as to the validity of these orders, but confirmed those which were then in existence. This provision had been interpreted as prohibiting the Government from making them for the future. Since 1861, the three subordinate legislatures had legislated for their own Provinces, and the general result was this, that we had, as written law, first, the English Acts of Parliament relating to India; secondly, three sets of Regulations from 1792 to 1834; thirdly, the legislative Acts of the Governor General in Council, which might be divided into the Acts relating to British India, the Acts relating to Bengal, the Acts relating to Madras, and the Acts relating to Bombay; then the Acts relating to the Non-Regulation Provinces, namely, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces, and British Burma, passed since 1861. There were, besides these, the Acts of the local legislatures of Bengal, Madras and Bombay, passed since 1861 and in force in those provinces. And in addition to all these, we had the executive orders for the five Non-Regulation Provinces, passed at various periods before 1861. The nett result of the whole was that, including

the English Statutes, there were no less than twenty-one different classes of laws prevailing in different parts of British India, and these twenty-one classes of laws were made by eight different authorities.

The following statement exhibited the whole matter in a compendious form :—

There were in force in—

I.—British India—Acts of Parliament	... ...	1
Acts of Legislative Council of Governor General since 1834		2
II.—Bengal—Bengal Regulations, 1792—1834	... ...	3
Acts of Legislative Council, 1834—1861	... ...	4
Acts of Bengal Legislative Council, 1861—1870	... ...	5
III.—Madras—Madras Regulations, 1802—1834	... ...	6
Acts of Legislative Council, 1834—1861	... ...	7
Acts of Madras Legislature, 1861—1870	... ...	8
IV.—Bombay—Bombay Regulations, 1827—1834	... ...	9
Acts of Legislative Council, 1834—1861	... ...	10
Acts of Bombay Legislature, 1861—1870	... ...	11
V.—N. W. Provinces—Executive Orders to 1861	... ...	12
Acts of Legislative Council, 1861—1870	... ...	13
VI.—Panjáb—Executive Orders to 1861	... ...	14
Acts of Legislative Council, 1861—1870	... ...	15
VII.—Oudh—Executive Orders to 1861	... ...	16
Acts of Legislative Council, 1861—1870	... ...	17
VIII.—Central Provinces—Executive Orders to 1861	... ...	18
Acts of Legislative Council, 1861—1870	... ...	19
IX.—Burma—Executive Orders to 1861	... ...	20
Acts of Legislative Council, 1861—1870	... ...	21

These twenty-one classes of laws were made by the following authorities :—I—Parliament, II—The Governor General in Council (for Bengal), III—The Governor of Madras in Council, IV—The Governor of Bombay in Council, V—The Legislative Council of Governor General, VI—The Legislative Council of Bengal, VII—The Legislative Council of Madras, VIII—The Legislative Council of Bombay, IX—The Governor General in Council in his executive capacity.

That, certainly, if we regarded the whole result, was an extremely complicated state of things ; but if we bore in mind the extent of the territory legislated for, the number of the provinces and the differences of every kind between their various populations, it was not a great but a small extent of written law. He might add that, if anybody thought that the amount of written law in India was too great, he might console himself with the reflection that we hardly possessed any substantive law at all, as distinguished from laws relating to procedure, applying to the whole of British India, with the exception of the Penal Code. The Indian Succession Act related only to Europeans.

We had no general law relating to contracts, no law relating to torts, very little law relating to evidence, and no general law relating to insolvency Those who thought that enough had already been done, should recollect that those immense heads of law were quite untouched by the legislature, and matters relating to them, where the English law did not prevail, were decided according to the dictates "of justice, equity and good conscience," which meant, in practice, according to the notions which the Judges formed from a few English text-books.

That was the state of things, and that being so, he thought that, on the one hand, the Government ought to be acquitted of having done too much, and, on the other hand, that it ought to be remembered that the course of events had produced a singular and exceedingly intricate state of things, which we ought to reduce as soon as possible to comparative consistency and simplicity. A great deal had already been done, though, for want of judicious arrangement, the fact was not apparent. There never was any authentic collection of the whole written law of British India. Some parts of the written law of India, and in particular the executive orders in force in the Non-Regulation Provinces, had never been collected at all. From time to time, collections had been made of large parts of it under the authority of Government, but there was no book which professed to be a complete compilation of the law, like the English statute-book. Enough had, however, been done to give a good notion of the extent to which the process of repeal and consolidation had been carried.

In 1854, there was published a collection of the Bengal Regulations and Acts, then in force, by Mr. Clarke of the Madras Civil Service, under the authority of the Government. That collection filled three quarto volumes, and contained the whole of the Bengal Regulations and the Acts of the Governor General in Council from 1834 to 1853. Of those three volumes of Acts, then in operation, Mr. Stephen believed that not half a volume was now in force.

By Acts X of 1861, XVII of 1862 and VIII of 1868 nearly the whole of the Bengal Regulations had been repealed, except those which related to particular subjects, such as Revenue, the Management of Wards and Pensions.

The same was the case, to an even greater extent, with the Madras Regulations, a vast mass of which had been swept away by Madras Act II of 1869. The same process had been going on with respect to the Acts of the Legislative Council. Every one who had occasion to administer the law of this country was acquainted with the collection of Acts published by Mr. Theobald. That collection consisted of five volumes, with a small additional part. He (Mr. Stephen) had before him the first of these volumes, which contained the Acts from 1834 to 1848. He had been looking through the volume, in which the repealed Acts were struck out, and, of the Acts passed between 1834 and 1848, there were very few of any general interest or importance in force.

The whole of the Acts now in force, passed during the first forty years of English legislation in India, would go into a very small compass indeed; and it must be remembered that the process had been carried out only recently, because the volume which he held in his hand was published in 1860, and omitted the Acts which had then been repealed. All those Acts had therefore been repealed since, and a very large proportion of them within the last two years. He was not in a position to say to what extent the process had been carried out, but if all the repealed matter and repealing Acts were left out of these five volumes, they would be reduced to a very much smaller compass; and he might further add that, if the contents of that residuum were divided according to the local application of the Acts, it would be found that that comparatively small remainder of unrepealed law contained parts of nine different statute-books. It contained, on the one hand, the whole statute-law (except English Acts of Parliament) which was in force in British India generally; it contained all the laws passed since 1861 which applied to the five Non-Regulation Provinces, and it contained the laws—a very considerable number—which applied to Bengal, Madras and Bombay respectively. If, therefore, you were able to repeal the laws that were really useless, and to divide those which were of use into nine different classes, one for British India generally, one for Bengal, one for Madras, one for Bombay, one for each of the five Non-Regulation Provinces, you would see that the real written law of India was reducible to a very small compass indeed. He would add that many parts of it were arranged in as scientific a manner, and drafted in language as clear and terse, as any body of law in the world.

The present Bill was intended as a step towards the reduction of this intricate state of things to order. The Council would naturally ask, how that task was to be performed, and what part the Legislative Council would be asked to take in it? The answer to that was short and simple. Four things were necessary;—first, to repeal all useless matter; secondly, to consolidate the different Acts relating to the same subject; thirdly, to re-arrange the Acts, if possible, according to their subject-matter, certainly according to their local application; and, fourthly, to ascertain from the Non-Regulation Provinces what Acts and Orders were there in force, and to publish them in an authentic form. You would then have a complete body of written law divided according to subject and place. A considerable part of that operation would be matter of mere executive detail. As he had already said, there was no one authorised statute-book to which every one must refer; but although there was no book of that kind published under the authority of Government, books such as those prepared by Mr. Clarke and Mr. Theobald had repeatedly been published, and were indispensable to the administration of justice. It was a matter for the discretion of those

who published such books how they should be arranged. The authority of the legislature would be required to repeal and consolidate, and to put on a satisfactory footing the executive orders having the force of law in the different Non-Regulation Provinces. Many considerations, one of which was the state of the finances, must influence to a considerable extent the time in which any scheme of the kind could be carried out. He held out no hopes of any rapid execution of it, but he (MR. STEPHEN) thought that we should look to the ultimate attainment of such a result, and that we should do something towards it, first by repeal, secondly by consolidation, and thirdly by obtaining an account of the different executive orders in force in the Non-Regulation Provinces. These orders had never, so far as he knew, been collected, and there was considerable difficulty in ascertaining what they were. Government had, however, in May last, taken steps to have them collected and published; and in the Panjáb, Oudh, the North-Western Provinces, and, he believed, the Central Provinces, considerable progress had been made in the work. Many of these executive orders related to matters of the highest importance; as an instance he might refer to the Civil Code in the Panjáb: it was in point of law a mere executive order, but in point of fact it was an attempt, and by no means an unsuccessful one, to solve a problem with which the Government of India had not yet ventured to grapple. When we once had all these orders collected together, it would be possible to define the extent of their operation, and to do away with a great deal of uncertainty as to the extent to which other Regulations applied to those provinces.

That was the general scheme of which this Bill formed a part, and he hoped to be in a position, at no distant date, to lay before the Council a list of the enactments which it was necessary to repeal, as a first step towards the completion of a task which would be brought to a termination as rapidly as the state of business and other considerations would permit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th March 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 25th February 1870.

Office Supdt. Govt. Printing.—No 8260 L. C.—3-3-70.—20P.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Friday, the 4th March 1870.

PRESENT:

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I., Senior Member of the Council, *presiding*.

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

COURT FEES BILL.

The Hon'ble MR. COCKERELL moved that the second Report of the Select Committee on the Bill to provide for the better regulation of Court Fees be taken into consideration. He said that the effect of the amendment which was carried when this Bill was last under discussion, was to postpone the consideration of the Select Committee's first report thereon; there were consequently two reports before the Council. He did not, however, on the present occasion, propose to make any further reference to those provisions of the Bill which were embraced in the former report, but would confine his remarks to a brief statement of the reasons for adopting the additional amendments which had been introduced into the Bill since its re-committal.

At the suggestion of his hon'ble friend, Sir Richard Temple, the provisions of section 7, clause v, paragraph (*c*), had been made more comprehensive. As was justly remarked when this subject was last before the Council, there were estates or tenures not included in the term inám, which, as regarded the principle and measure of their revenue-assessment, were not very dissimilar to 'inám' lands, and seemed to require the application of the same rule in

regard to the valuation of suits relating to such property. For instance, in the Lower Provinces of Bengal, it had been the almost universal practice, on the resumption of land which had escaped assessment at the general settlement of estates in its vicinity, to admit the holder of such land to engagement for the payment of the Government-revenue at half the customary rate of assessment; and this lenient settlement had been accorded, not with any reference to the productive character of the land, but in satisfaction of such equitable rights as the holder might be considered to have in virtue of his long possession of the land free from the payment of revenue. In such cases, no less than in that of inám-land, the amount of the revenue-assessment afforded no fair criterion of the value of the land; it was therefore thought expedient to substitute, for the term 'inám,' such general words as would embrace all estates and land subject to the direct payment of Government-revenue, but assessed at rates more or less below the full normal demand.

The Bill, as first amended, imposed a fixed charge of ten rupees on suits relating to rights of pre-emption, and the specific performance of a contract. In the case of the former class of suits, the effect of that provision would be to reverse the existing practice, under which such suits were assessed according to the value of the property regarding which a right of pre-emption was claimed. Further consideration of the matter had led to the conclusion that this practice was in accordance with the principle adopted throughout the Bill, that the valuation of suits should be regulated by the value of the subject-matter actually in dispute, and should therefore be maintained. In the cases referred to, the subject-matter was in fact the possession of the property which the litigants claimed a right to purchase, and the application of the above-mentioned principle to such cases was in no way barred or affected by the circumstance that one or other of the disputing parties had to pay a certain amount to some third person as a preliminary condition to obtaining the actual possession of the property to which the suit had reference. So, also, in respect of the various descriptions of contracts forming the subject of a suit to enforce specific performance, it could not correctly be said that the litigated matter had no appreciable market-value. The fixed charge formerly proposed was therefore thought inapplicable to this class of suits, and provision was made in section 7, clause x, of the re-amended Bill for substituting an *ad valorem* rate, regulated by the estimated value of the interest involved in the contract.

There was a property, or interest in land, the owner of which was in certain parts of the territories under the Government of the Lieutenant

Governor of the North-Western Provinces termed an Ubáridár, and in other parts of India was known under various designations, for the litigation of whose rights no specific provision was made in the former Bill. The person in whom this interest was vested could not be said to have possession of the land out of which the interest arose. His position was rather that of a farmer or assignee of the Government-revenue payable in respect of the land in question; hence a suit affecting his rights would not come within the provisions of section 7, clause v: and even were this not so, there would be the same objection to make the amount of the revenue paid to Government by such person the basis of the valuation of a suit relating to his interest, as had been shown to apply to this mode of valuation in the case of inám-land; for the revenue which the Ubáridár, or other person above referred to, paid to Government bore no adequate proportion either to the value of the land to which his interest related, or to the amount which he received from the persons in possession of such land, with whom the revenue-settlement had been effected. It was proposed therefore to apply the rule of section 7, clause v, paragraph (*c*), to this class of cases.

It was considered expedient that the sanction of the Governor General in Council should be required to validate the rules to be framed, under chapter IV of the Bill, for regulating the strength and cost of establishments, as well as the amount of the fees to be levied, for serving the processes issued out of the several courts. Imperial control was deemed essential to the well-working of the new system, the effect of which was to make the cost of serving processes a charge upon the general revenues. The difficulty which at first sight seemed likely to arise out of the habitual exercise of this power of control in regard to the numerical strength of the establishments to be employed in serving processes might be obviated, it was thought, by framing the rules so as to admit of fluctuations in the number of peons entertained from time to time, without the necessity of a reference to the Supreme Government in the case of every temporary increase.

As regards the determination of the description of stamp to be used for the purposes of this Bill, it had been strongly urged that the authority of the Governor General in Council should be substituted for that of the Local Governments. The stamps in use were for the most part supplied from England, and uniformity as to the style of stamp to be adopted was essential to their economical provision. The proposed change was needed, therefore, to guard against the increased expenditure which would be not unlikely to result from a divided control in this matter.

Heretofore, summary suits to recover possession of property from which the suitor had been forcibly ejected, and applications to a civil court for the enforcement of a specially registered bond or agreement, had been subjected to one-fourth only of the rates of fees leviable on the institution of a civil suit. It was thought that this privileged rate might now be fairly raised to one-half of the ordinary rates. The scale of fees imposed by the Bill afforded, in itself, such a material concession in favour of litigants for small amounts—and suits of the classes referred to usually involved only an inconsiderable amount or value—that the further retention of the one-fourth rates was held to be unnecessary. Moreover, great practical inconvenience must be anticipated in the operation of a scale of fees which would embrace several denominations, including the fractional parts of an anna.

It was at first proposed to substitute, for the fixed fee heretofore chargeable on applications for a review of judgment, an *ad valorem* fee of one-eighth of the ordinary rates leviable on the institution of a suit. The chief object of this change was to discourage the institution of such applications on frivolous or insufficient grounds. It had been represented that the practice of seeking to obtain a re-hearing of the suit in this way, on grounds not contemplated by the law, was greatly on the increase; and that the time of the courts was needlessly wasted thereby, the mere loss of the small fee paid on such applications being altogether insufficient to check their improper presentation. The Committee had since been advised on high authority that one-eighth only of the full *ad valorem* rate was far too inconsiderable an alteration of existing charges to secure the object in view, and that the fee in such cases should certainly not be less than one-half of the ordinary rates leviable on the institution of a suit. When it was borne in mind that, under the operation of section 15 of the Bill, the ultimate incidence of this enhanced fee on the applicant was restricted to cases in which the application for a re-hearing was not warranted by the circumstances in which it was made, the increase now proposed seemed unobjectionable.

On suits coming under the Pársí Marriage and Divorce Act, an institution fee of thirty-two rupees was levied, whilst the fee on suits brought under the later Indian Divorce Act was fixed at only five rupees. As there was no marked disparity in the circumstances of the persons affected by these enactments, and the subject-matter of the suit was the same, the distinction in the amount of fee imposed by either enactment was only to be accounted for on the supposition that these fees were determined very much at hazard, and were certainly not regulated by any fixed principle. One of

the useful results of the present attempt to consolidate the law on this subject had been the bringing to notice of inequalities of this kind, and the opportunity thus afforded for their rectification. The first proposal was to equalize these fees by reducing the higher to the level of the lower rate. Since the publication of the amended Bill, however, it had been pointed out that, with regard alike to the importance of the cause, the time occupied by the courts in its adjudication, and the circumstances of the general class of persons concerned, a fee of five rupees was far too low. It was proposed therefore to substitute the mean rate of rupees twenty for the different rates now in force.

A slight alteration had been made in section 22. As originally drawn, it provided for the specific apportionment of the number of peons to be employed in each court subordinate to a District Court, for serving the processes issued out of such courts. The Committee had since learned that the local High Court had in contemplation some new scheme for the remodelling of process-serving establishments, and that the above-mentioned provision of section 22 was regarded as likely to obstruct its operation. It was not, he (MR. COCKERELL) thought, quite clear that any difficulty would have been created by the adoption of the provision referred to in its original shape; but to remove all doubt on the subject, the words which might be construed as necessitating the maintenance of distinct establishments of process-servers in each civil court had been omitted.

There were other minor alterations which did not call for special notice.

The consolidation of the law relating to court fees, which was a prominent feature of the Bill, had been matured by the transfer of several provisions of other enactments, and there was good reason to believe that, in this respect, the measure was now as complete as possible.

The Hon'ble MR. CHAPMAN desired to make some general remarks on the alterations that had been made in Chapter IV, relating to process-fees. For his own part he should have wished that these funds had been kept, as heretofore, quite separate from the imperial revenues, and maintained on a self-supporting basis. But it had been decided that these fees should merge into the imperial exchequer. Such being the case, he was prepared to admit that it was necessary the Financial Department should have the same control over all disbursements from them as they had over ordinary public charges. He (MR. CHAPMAN) wished he could think this control would be exercised in a generous spirit and in a comprehensive manner. Judging from the past practice of the Department he believed there was no chance of its being so exercised. He feared that, ere long, they should hear complaints from the High Courts and

others charged with the administration of justice, of the inefficiency of these establishments, both in respect to numbers and pay. It seemed to him that it would be particularly hard on suitors, who were ready to pay liberally for honest and efficient service, to have their interests jeopardized simply because the Financial Department would insist on employing an insufficiently paid agency. He considered his Hon'ble friend, Sir Richard Temple, to be placed in a very unenviable and even unfair position in respect of the control over establishments he was called upon to exercise. He was in charge of the State caldron—a vessel of limited capacity; and he was surrounded by a clamorous crowd of hungry applicants, each of whom was pushing forward his plate and 'asking for more.' Some of these, perhaps the most diffident and not the least deserving, he silenced in a summary manner, and to others, and generally the most noisy, he doled out a spoonful. Now he (MR. CHAPMAN) ventured to think it was not the proper way to deal with this crowd in this indiscriminate manner. He would muster them in regular order, separate the honest, hard-working, able-bodied men from the idle, useless hangers-on; give the former their fill, and once for all send the latter to the right-about. In other words, what he (MR. CHAPMAN) thought was very necessary in the present day, was a thorough, independent revision of establishments. Such a revision should be conducted by competent officers, well versed in each of the separate branches of the administration, and made after full local enquiry. It was expecting too much from human nature to ask the Departments to reduce themselves. The kind of supervision that was now exercised at the head-office in Calcutta, by men necessarily ignorant of the local requirements of the different parts of this vast empire, and unacquainted with the working of the different Departments, consisted in cutting down and, if possible, negativing each separate application for an increase. He (MR. CHAPMAN) believed they were most indefatigable in their efforts in this direction, and yet, in spite of their exertions, charges were steadily increasing to an alarming extent. He entertained the belief very strongly that there was not a single branch of the administration in which vast savings might not be made, and that, too, without any sacrifice of efficiency. He believed that it was only by such thorough scrutiny as he had suggested that retrenchment could be effected and economy enforced. And entertaining this belief, he was glad to have had this opportunity of expressing it.

The Hon'ble SIR RICHARD TEMPLE said—"Sir,—I am sure that the Council will excuse me if I refrain from following my hon'ble colleague (Mr. Chapman) into the points which he has just adverted to. In reference to what he has said about the unremitting efforts of the financial authorities for reduction of expenditure, and to the need of continued vigilance in

this respect, I am glad to hear such independent testimony publicly borne to the exertions of the Financial Department for the due discharge of its business, and also to the necessity which exists for ceaseless economy in our public expenses. But beyond making this acknowledgment, I shall hardly be expected by the Legislative Council to enter into the purely executive details which my hon'ble colleague has mentioned. I can only say that the Government of India in the Financial Department will continue to do, as it has heretofore done, its duty in these matters to the best of its knowledge and ability.

"I desire now to advert to one point which is of some importance. Though I acknowledge that the Bill as last amended has, in some five instances, equitably raised the stamp-duties to an extent which may yield two lákhs (£20,000) or more to the State; still there is one point in which I think that full justice has hardly been done to the financial interests of Government; and that point is the valuation of land in permanently settled provinces.

"The Council will bear in mind that, in section 7 of the Bill, it is provided that the value of land shall (for purposes of this Act) be deemed to be ten times the annual land-revenue in permanently settled districts, and five times the land-revenue in districts not permanently settled. Now, in districts not permanently settled, the above valuation, though very moderate, perhaps even low, is tolerably even and uniform, and so far correct, inasmuch as the land-revenue is a sufficiently fair index of the value of land in all parts of the country. And if, as time goes on, rectification becomes necessary, it is supplied periodically by revision of settlement. But, in permanently settled districts, the case is quite different. There, the land-revenue has probably long ceased to be a fair index of the value of the land in different parts of the country; and it will become more and more disproportionate to value as the country advances in prosperity. In some cases, indeed, the standard of ten times the land-revenue may prove to be too high a valuation. But in many cases it will prove much too low; and, on the whole, I fear that the tendency of this section will be to under-value (for the purposes of this Act) the lands of the permanently settled districts. And, inasmuch as these rich districts are the very places where large suits regarding land are most likely to arise, the under-valuation for stamp purposes will be of some financial importance. I admit, however, that the section does not make any unfavourable change, but merely leaves the law as it was.

"But if this valuation be defective, how is a better valuation to be devised? This is indeed not an easy question, and, as at present informed, I am only

able to answer it by saying that the market-value of the land and the average nett profits might in each case be ascertained. Some authorities of local experience are, as I understand, in favour of this view. If an attempt were made to give effect to such a view, some such amendment would have to be proposed as follows: 'section 7, clause v, in suits for the possession of land—according to the market-value of the land. Such value shall be deemed to be fifteen times the average amount of the nett profits obtained from the land during the three years next preceding the year in which the plaint is filed in court: provided that such value shall be estimated to be not less than ten times the revenue payable for the land, where the land forms an entire estate, or a definite share of such estate, paying annual revenue to Government, or forms part of such an estate, and is recorded in the Collector's register or separately assessed with such revenue, and such revenue is permanently settled.'

"Such an amendment would no doubt meet the object in view, and would guard against the State losing stamp-revenue by reason of imperfect valuation, inasmuch as a minimum standard (ten times the land-revenue) is fixed, below which no valuation would be allowed to go.

"But to any such amendment there would be this manifest objection that, in every case, there would have to be an ascertainment of the market-value and the nett profits. In some cases, it might be said that an essential preliminary to the institution of a suit regarding land would be an elaborate enquiry in order to fix the amount of the stamp to be presented.

"When I brought the question before the Select Committee, the above objection seemed to have such weight as to preclude the entertainment of any such proposal. I myself, however, while sensible of the force of the objection, do not consider it an insuperable obstacle. For the principle of ascertaining market-value for stamp purposes, is already sanctioned by the Bill for several classes of cases. Still, having regard to the objection raised in Committee, and in the absence of complete local knowledge, I refrain from pressing the matter further at present.

"I merely make these remarks in the hope that the point may continue to receive attention, and that, if hereafter a better mode of valuation for land in permanently settled districts can be found, it may be embodied in our Court Fees Law."

The Hon'ble Mr. Stephen wished to offer one observation on the remarks made by the Hon'ble Sir Richard Temple in relation to the assess-

ment of estates. No doubt the mode which had been adopted in the Bill, as Sir Richard Temple had said, was arbitrary; but MR. STEPHEN thought it followed, from the fact that Sir Richard Temple did not propose any amendment, that of necessity we must make a somewhat arbitrary valuation, on account of the extreme difficulty of deciding upon any principle of valuation which was not arbitrary. There was no doubt, too, that any rule which was difficult of application, and which might involve nice calculations, would be so very great an evil to suitors and open so wide a door to litigation, that the proposed plan was the least of two evils. A rule by which the Government-revenue would sometimes lose and sometimes gain was not so bad as a rule that would open the door to litigation on the question as to the sufficiency of the stamp on the plaint. To introduce a question as to the market-value of the land in dispute, in order to decide what stamp was to be placed on the suit, would lead to uncertainty and be a hardship on suitors. The person who was to decide the question of the value of the land the subject of the suit was the plaintiff, and it was very hard to call on him to apply a difficult rule. The market-value of land was a matter on which you might raise infinite discussion, especially in all permanently settled provinces, where land had become subject to a very intricate system of sub-divisions. These were considerations which weighed very much with the Select Committee in adopting the present rule of a fixed ascertainable value. The question had been carefully considered by the Committee, and the result had been arrived at after much discussion.

The Hon'ble MR. STRACHEY said that, but for one reason, he would probably have said nothing regarding this Bill, and that reason being a purely personal one, he must apologize to the Council if he took up a few minutes in making an explanation which concerned nobody but himself. When the measure was introduced, in 1867, which the Council was now asked to repeal, it was stated that the main reason for a change in the law arose from the necessity of carrying out certain propositions which he (MR. STRACHEY) had made, and which had been approved by the Government, for making a large increase to the salaries of the subordinate Judges, and to the allowances of ministerial officers in the Civil and Revenue Courts throughout India. It was estimated that this increase of salaries would cost £300,000 a year, and it was avowed that it was a main object of the Bill to enable the Government to obtain additional funds to meet this additional charge. The Act of 1867, or at least that part of it which referred to Court fees, having thus been declared to have had its origin, to a great extent, in the propositions made by himself, he found that he frequently got the credit of having had something to do with the preparation of that law; and this had been so repeatedly said in one shape

or another, that he took this opportunity of correcting the mistake. The fact was that there had hardly ever been an Act passed by the Indian legislature to which he more strongly objected, and the disappearance of which from the statute-book he would see with greater satisfaction. He had always believed that, of all bad taxes that existed, there were none worse than high taxes on the administration of justice; and the taxes imposed under the existing law were in his opinion enormous.

In a paper which he had before him, written by the Advocate General of Madras and circulated to the Council, there was an illustration of this, which was worth repeating. He quoted a case which lately came before the High Court at Madras—the case of a suitor who had to pay the enormous sum of 32,000 rupees before he could even ask the Court to hear his case, whereupon the Chief Justice remarked that in no country but India could such a state of things exist. MR. STRACHEY agreed with the Advocate General that schedule B of Act XXVI of 1867 was as unwise and unjust a measure as ever emanated from any legislature, and he thought that the remarks made by the Advocate General, and which MR. STRACHEY would now read to the Council, were perfectly justified by the facts. The Advocate General said that what was formerly foretold by him as to the Act of 1867 had admittedly come to pass. He said—

"The Act has proved repressive of litigation; not dishonest litigation, but the *bonâ fide* pursuance of real or imagined rights; and when we learn that, while litigation has fallen-off twenty per cent., and revenue from judicial taxes increased by thirteen lákhs, I think it is hardly possible to bring forward two more damnatory statements; for, while twenty per cent. of those seeking justice have been absolutely debarred from redress, additional revenue has been squeezed out of those unfortunate suitors whose necessities compelled them to persevere in claiming their rights in the face of prohibitory and oppressive fines."

MR. STRACHEY did not pretend to say that, in his opinion, the present Bill afforded a really adequate measure of relief; but, in the existing state of the finances, he thought that it must be admitted that it gave as much relief as we could reasonably expect could be given. It would now be waste of time to talk of reducing, to an extent which he himself believed would, under other circumstances, be proper, the taxes which were levied on suitors for justice. But while he certainly hoped that the time would come when we should see a much larger measure of relief than the present, this Bill was, he thought, a decided step in the right direction. He (MR. STRACHEY) believed that it would remove a very considerable amount of hardship and of injustice, and he thought that, by adopting it, the Council would get rid of an extremely bad law, which had

been proved by actual experience to have been the cause of very serious denial of justice.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that the following clause be inserted after section 32 :—

"And the Indian Income Tax Act, section twenty, shall be read as if, for the words 'the value of the said stamp,' the words 'the fee on the petition,' were substituted."

The Hon'ble SIR RICHARD TEMPLE expressed his concurrence.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Bill as amended be passed.

The Motion was put and agreed to.

WEIGHTS AND MEASURES BILL.

Colonel the Hon'ble R. STRACHEY, in moving for leave to introduce a Bill to regulate the Weights and Measures of British India, said that the Bill was designed to give effect to the conclusions lately adopted by the Governor General in Council, and concurred in by the Secretary of State, as to the steps to be taken towards reforming the weights and measures of British India.

The proposals of the Government of India, which were entirely approved by the Secretary of State, were as follows :—

"We therefore consider that the new unit of weight should be a ser, equal to the kilogramme, or 2·205 lbs. avoirdupois, and that a system of decimal multiples and sub-divisions of the unit of weight should be accepted as a fundamental part of the new scale to be recognized by law. We are, however, of opinion, for the reasons stated by Mr. Strachey in his minute, that other multiples and sub-divisions should not be prohibited wherever their continued use appears to be demanded on considerations of present convenience and expediency, and that, while it is desirable that the new system of weights should be brought into general use as speedily as possible, it should not be forced on any class of the community until such class is to some extent prepared to accept it. The best preparation for the general adoption of the new weights will undoubtedly be their introduction and authoritative use in the public Departments of the Government, which are so widely scattered over the whole of the country. We therefore propose that the new unit of weight, with a system of decimal multiples and sub-divisions, should be authoritatively adopted in all Departments of the Government, by all municipal bodies, and on the railways, as soon as practical convenience will admit."

The discussions that had taken place on the subject of the weights and measures of India had now been prolonged over, he (COLONEL STRACHEY) thought, something like thirty years, and it might safely be affirmed that all

that it was possible to know on the subject, likely to have any influence on a decision, whether they referred to the facts of the case or the opinions formed on those facts by persons worthy of attention, were before the Government when it came to the conclusion he had just stated.

At the present time, India was in the somewhat singular position of having no weights or measures recognized by any law. The only law that referred to the weights of India had recently been repealed, with a number of other old Acts considered to be obsolete, he did not know under what exact circumstances. He referred to Bengal Regulation VII of 1833, which established for the purposes of the Government Mints certain weights to be employed in dealing with the bullion brought to the Mints for assay. These weights were based on the tola or the weight of the rupee, 180 grains, which had about the same time been finally adopted as the standard of the currency of India. The ser under this system consisted of 80 tolas, the maund of 40 sers, and it was exactly equal to 100 pounds troy.

But hardly any attempt was ever made to adopt these weights authoritatively in any part of India, excepting in a limited way in some of the Government Departments, and their inconvenience in relation to commercial transactions with Great Britain, owing to their being related to the pound troy, and not to the pound avoirdupois, had long been apparent.

The adoption of these weights was moreover limited, with some few exceptions, to the Government offices in the Bengal Presidency, and they might be said to be unknown in the provinces of Madras and Bombay.

The result of the enquiries that were made after the general subject was taken up in 1863, on the motion of the Government of Madras, which, he (COLONEL STRACHEY) thought, was due to the then Governor, Sir. W. Denison, was to bring out, in a very unmistakeable manner, the fact that there were no such things as recognized weights and measures in any part of India; and of all the suggestions that were made with the object of remedying this confusion, none, he thought, were to the effect that any existing Indian weight or measure could be accepted as worthy of constituting new units for general use.

The following general description of the existing weights and measures of British India would enable the Council to appreciate the state of things that had to be dealt with :—

"Throughout India the old standard of weight seems almost universally to have been the current coin of the locality, and the multiplicity of coinages has been, and is still, accompanied by an equal or even greater multiplicity of weights. Not only do the weights vary

from province to province, but from town to town, and even within the same town or rural district. Different weights are used in various trades in the sale of different commodities, and in wholesale and retail transactions.

"In Northern India, the usual unit of weight is the tola, which is the weight of the current rupee-coin. The ser is a given number of tolas, varying from 70 to 100. The *man* (by the English commonly called maund) is usually 10 sers. A weight of five sers, called pusseree, is generally recognized, and the ser is sub-divided into sixteen chittacks. The rupee of the British Government weighs 180 grains; the ser of the British Government being 80 tolas is equal to $2\frac{2}{55}$ lbs. avoirdupois, and the Government maund is $82\frac{2}{7}$ lbs. avoirdupois, or 100 lbs. troy. Local sers and maunds vary on either side of 2 lbs. avoirdupois, and 80 lbs. avoirdupois.

"In Southern India, the original unit of weight commonly used was the pagoda, a coin no longer current. The common katcha ser was 80 pagodas, and was equivalent to 24 current rupees. The maund of Southern India usually contains 40 such sers, and is commonly divided into 8 viss, or five ser weights, and forty palams. The khandi of 20 maunds is another weight in ordinary use. At Madras the Government, some years back, endeavoured to establish a local system of weights on the basis of the rupee weighing 180 grains. The ser was not acknowledged in this system, but would be 0·617 lbs. The viss was 3·086lbs., and the maund 24·686 lbs. This system, however, never came into use. In practice, the commercial maund in the town of Madras is taken at 25 lbs. avoirdupois, and the viss and khandi are modified accordingly; but beyond the municipal limits, other weights are employed. The weight in common use in Burma is called viss also; it is 3·65 lbs., and is sub-divided into 100 ticals each of 252 grains.

"In Guzerat, a ser of 40 local rupees weight, a maund of 40 such sers, and a khandi of 20 maunds, are the common weights. These maunds vary from 37 to 44 lbs, and the sers are about 1 lb.

"In Malwa, a ser of 80 local rupees weight, and a maund of 20 such sers, are common. This maund is approximately the same as the Guzerat maund, the ser being about 2 lbs, as in Northern India.

"At Bombay, the old ser was about 10 or 12 oz. avoirdupois, being reckoned as equal to 30 pice. The Bombay maund being 40 such sers is nearly 28lbs, at which it is now commonly reckoned. This maund is the usual one also on the Malabar coast, south of Bombay; but the ser is the Madras one of 24 rupees weight, so that the maund consists of 46 to 48 sers instead of 40. At Bombay and in the Deccan, the sub-division of the ser is into 72 parts called tank. The Deccan ser is commonly 80 of the local rupees, or about 2 lbs; the maund varies greatly. In the Deccan the weights seem to merge into the Madras systems on the one side, and into the systems of Malwa and Northern India on the other.

"Measures of capacity are hardly known in Northern India. In Bengal and Southern India they are more frequently used, and, as a rule, are intended to be equivalent to certain determinate weights of grain. In Burma, grain is universally sold by measure. There is, however, such great variation among measures having the same name, that it would be useless to refer to them in detail.

"The usual lineal measures are the cubit or háth, and the yard or gaz, the latter being divided in Upper India into 16 girás or 24 tasus. The háth varies from 14 to 20 inches; the gaz from 28 to 40 inches. Thirty-three inches is the length assumed for the gaz in fixing the official land-measures in the North-Western Provinces. The kos is sometimes taken to be 4,000 gaz, about 2¼ miles, and sometimes half that distance; but 5,000 gaz, equal to about 4,500 yards, or 2½ miles, would seem to have been the old kos of North-Western India.

"Measures of area are commonly based on the háth or gaz, but vary so exceedingly from one district to another, that no general account can be given of them. Frequently the denomination of the land-measures is the same as that of the grain-measures, it being understood that the quantity of grain in a given measure will sow the area of land having the same name. It is common in Southern India to find the land-measure of the same name differ considerably according as the crops are irrigated or unirrigated. 'For all Government purposes, the English acre has now almost universally been adopted, and the revenue-records are, I believe, almost everywhere drawn out on this basis, though the local measurement is at the same time still recognized."

This state of confusion was without parallel in any country in which even a moderate amount of supervision had been exercised over the weights and measures, and it led naturally, and he might say necessarily, to proposals that some one of the established systems of Europe should be accepted for India. The proposals of this sort could be divided into those for adopting the English pound and yard as the new units, and those in favour of the adoption of the metrical system.

The arguments for and against these alternative plans had been long and thorough. The Council would, he thought, hardly expect him to follow these arguments at length on this occasion, and he would ask a reference to the papers on the subject, published in the *Gazette of India* of the 18th February 1869. These contained all the more important elements of the controversy, as he supposed he must call it, as to the merits and demerits, respectively, of the British metrical systems of weights and measures as related to their suitability for adoption in India.

The Government of India thus summed up the grounds on which it adopted the metrical unit of weights in preference to the British:—

"For the reasons there assigned, we are of opinion that the adoption of the English system of weights is not advisable. Neither the English pound, nor any multiple of it, can be a convenient unit of weight for India. It has been almost universally admitted that the new unit should approximate to the existing Indian ser, the average weight of which is about 2¼ lbs. To reduce the ser to 2 lbs. would be extremely unpopular and objectionable.

"On the other hand, the kilogramme of the metric system, which weighs 2·205 lbs., at once provides a ser, which would certainly be as acceptable to the people as any that could

be chosen. Further, we consider that, on account of its simplicity and its symmetrical form, the metric system of weight in its integrity will be more convenient for India than any other. While it will be perfectly suitable for the internal wants of India, it will be in harmony with the system which has been already adopted in the greater part of the civilized world, and which may be ultimately adopted by England herself. In any case, it will be more convenient for commercial transactions between England and India than any other system not really commensurable with that of England."

He (COLONEL STRACHEY) might add that, so far as could be ascertained from the expression of opinion on the subject in the newspapers of India, these conclusions had met with the general assent of the public. Also, if he did not mistake the reference made to the subject in the last report of the Calcutta Chamber of Commerce, that influential body accepted with satisfaction the proposals of the Government.

The question might be asked, perhaps, what was the necessity for interfering by a legislative enactment in this matter? The reply was easy, and he thought complete. At the present time, it was practically impossible to say what was a false weight, because there was no such thing as an established and recognized true weight. Any one might say, in a manner that could not be controverted, that the particular weights that he used were those by which he consented to sell, and that it was the affair of the purchaser to satisfy himself what was the magnitude of these weights, and whether the terms of the sale were satisfactory or not.

Quite recently he was informed by a district officer that, in a part of the country where he had been employed, it was the practice of the sellers of goods at the bázárs or markets to go provided with a series of weights of increasing magnitude. The bargaining for the goods brought for sale began by an offer of a certain quantity for a certain sum, according to the weight which was produced. If this was not accepted as too high, the seller, instead of reducing the price, increased the size of his weight, and produced the next larger weight of his series. And so he went on until, by a suitable variation of the weight, the price having remained unchanged, the customer was satisfied.

No doubt trade could be conducted on such a system, but he thought few persons would argue that it was likely to be convenient. If, instead of altering the prices we paid for commodities, we discussed the intrinsic value and weight of the coin with which we purchased, and varied these, instead of varying the quantities to be got for a fixed quantity of money of a certain standard-value, we should not do what was more inconvenient.

Of course, the illustration he had just given of the condition of the weights of the particular district referred to, was a very extreme one, but it was instruct-

ive, as indicating the rudimentary condition of the trade of parts of this country and the singular expedients to which the people were forced to resort in the absence of fixed weights or measures.

In truth, the step which the Government of India now purposed to take in regard to the adoption of a standard for weights, was quite analogous to that which was taken some thirty or thirty-five years ago in adopting a standard of value. Before that time, there were a vast number of various sorts of rupees of various values. In all purchases, the precise value of the coin in which payment was made was just as important as the precise quantity of the article sold. The adoption of a single standard of value had removed all necessity for considering the variation of more than one element in commercial transactions, all dealings being now based on a definite money-value, the only doubtful matter being the quantity of the article bought or sold.

What was now desired was to give a common standard of weight, which should be as generally accepted, and with as great security to buyers and sellers, as was the standard of value.

By persons not acquainted with the results of the absence of precise and recognized standards of value and quantity, the extreme inconvenience of not having such standards would not easily be appreciated. The only thing to which the want of such standards could be compared was the want of a common language or of the arts of writing or printing. That societies could go on without these artificial helps was not to be disputed, but that very great inconvenience was thus caused, and very great obstruction placed in the way of the growth of trade and improvement generally, was incontestable.

He could not conclude these observations without remarking that it seemed to him certain that it would be a cause of no little astonishment to those who succeeded us, how it could have happened that the Government of India so long left the country without any defined standards of quantity. The necessity for such conveniences in the transactions of a community so wealthy and engaged in so vast a commerce, external and internal, was so obvious and so urgent, that it was marvellous, not that the present proposal was now made in the year 1870, but that it should have been so long delayed. What was proposed for India was in no sense what certain persons in England had desired in respect to the weights and measures of that country. We did not ask for an assimilation of weights and measures with those of other neighbouring countries with which we had great transactions, on the score of the greater convenience of the other weights and measures, and the importance of having uniformity in transactions conducted on so large a scale. What was desired for

India was for the first time to adopt some fixed standard of quantity where none had hitherto existed, and to place once for all on a definite basis the multitude of transactions of trade and commerce which had till now been left to be settled too often in a manner that placed the buyer at the complete mercy of the seller, and gave the most objectionable openings to fraudulent dealings. We hoped, it was true, at the same time that we did this to give the greatest possible ultimate convenience to the community in their internal trade, by the adoption of a system which was in itself very simple and more perfectly suited to arithmetical computations than any other system could be. While, by accepting the system which was now almost exclusively used on the continent of Europe, and the recognition of which in England also seemed now almost certain to come to pass before many years were over, we might expect to place the external commerce of India, in respect to the weights it employed, on a footing in which no further change was ever likely to be called for.

The Motion was put and agreed to.

The Council adjourned to Friday, the 11th March 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 4th March 1870.

Office Supdt. Govt. Printing.—No. 8732 L. C.—9-3-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 11th March 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

FEMALE INFANTICIDE BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill for the prevention of female infanticide.

INDIAN WEIGHTS AND MEASURES BILL.

Colonel the Hon'ble R. STRACHEY applied to His Excellency the President to suspend the Rules for the Conduct of Business, to enable him to introduce the Bill to regulate the Weights and Measures of British India. He said that he made this request to render possible what he feared would otherwise hardly be the case, the passing of this measure before the Government of India left Calcutta, if it should be approved by the Council after the detailed consideration which they would be asked to give.

The Bill was very simple in its form, and its object was to give effect to the conclusions of the Government of India on the general question which had now been before the public for more than a year. The Council would, he thought, be fully as able to discuss the principles of the Bill today as they would have been had the longer period usually allowed elapsed since the Bill was in the hands of the members of the Council.

He might mention that it was the desire of the Agency of the East Indian Railway Company to adopt the new unit of weight on the opening of the Chord Line Railway, which might be expected to take place towards the end of the coming rainy season. The opening of this line would necessitate the re-arrangement of the whole of the charges for goods sent between Howrah and the stations above the end of the new line, and new tables would have to be prepared in consequence. The Agency wished to make the change as far as possible a final one, by adopting, in the new tariff, the ton of 1,000 kilograms as the unit on which their charges were to be made. It was evidently desirable that the new weights should, if possible, be authorised by the legislature before they were adopted by the Railway Company, and it was therefore desirable that the law should be passed before the Government of India returned to Calcutta.

It would, he thought, be generally considered that a Bill relating to the weights and measures of India should be fully discussed by the non-official members of this Council, as well as by those members who represented Madras and Bombay, and the Government would be reluctant to deal with such a measure at Simla.

If the Rules were not suspended in the present case, he feared that the time left for the consideration of the details of the Bill would be so short, and would come into a period when the attention of the Council would necessarily be given to other questions of great importance, that there was much danger that the Bill could not be passed at all before the Government left Calcutta.

The President declared the Rules suspended.

Colonel the Hon'ble R. STRACHEY then introduced the Bill and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that, after the explanations that he before had the honour to offer on the subject of the Bill, he need not detain the Council with many remarks on the present occasion. The first object of the Bill was to declare, in an authoritative manner, the determination of the Government of India that certain new weights and measures should eventually be received as the established weights and measures of the country. These weights and measures, it would be seen, were to be based on the units of the metrical system. But considering the difficulty of accomplishing any fundamental change in such matters otherwise than gradually, it had not been thought desirable to affirm that the precise system of weights and measures commonly known as the metrical system should be adopted in its entirety, and it was left to the discretion of the Government of India to declare, from time to time, what the

precise denominations and magnitudes of the authorized weights and measures were to be, subject to the proviso that they should all be based on the metrical units. In like manner it would not be required that the sub-divisions of all the new weights and measures should necessarily be expressed in decimals, though a preference would be given to decimal divisions, if it was thought practicable to ensure their adoption. The formal declaration by the Government, under the provisions of a legislative enactment, that it had adopted the resolution to accept such a system of weights and measures to the exclusion of all others, would, he ventured to think, be one of the steps most likely to bring about a spontaneous adoption of the new system without any pressure under an obligatory law. Until the Government had pronounced in an unmistakeable way its intentions, it was not to be expected that persons engaged in trade would run the risk of supplying themselves with new weights or measures, and adopting them in their business, when some fresh declaration of the Government might, at some future time, render them all useless. He (COLONEL STRACHEY) looked confidently therefore on the declaration on this point which the Bill contained as being likely of itself to do a great deal towards the ultimate general adoption of the new system, and in fact to make practicable, at no very distant period, the application of the other parts of the Bill, first in the larger towns, and subsequently and by degrees in the country generally. The Bill made a distinction between weights and measures. No power was taken to require the compulsory use of measures excepting in Government offices, and by municipal Bodies and Railway Companies. The compulsory powers affecting the general public only referred to weights. This distinction was made in accordance with the conclusions of the Government that it was not desirable at first to deal with anything but the weights of the country, the use of which, in the transactions of everyday life, stood on a totally different footing to the use of measures. As regards the Government departments, of course it would have been quite optional with the Government to determine at any time what weights or measures they should use, without legislation, supposing that legislation had not been thought desirable on general grounds. But, for the reasons he had already given, it was very expedient to show what the intentions of the Government were, and to pledge the Government to move, when it thought fit so to do, in a certain direction and no other. The Bill therefore declared that the Government might, when it thought fit, require the use of the new weights and measures by all Government departments. It had been thought proper to deal with municipal offices in the same way as those of the Government. In fact, in the majority of cases, the influence of the Government would no doubt have sufficed to ensure this without a legislative provision for it. But the same argument applied to such cases as in that

of Government departments, and these municipal bodies, when not directly under Government influence to such an extent as would have ensured their acceptance of the wishes of the Government, might reasonably be looked to as bound to give the Executive Government all practicable help in carrying out a great public improvement such as that which this Bill contemplated. The Railway Companies had been included with the Government and municipal Bodies for similar reasons to those he had just explained. But in their case there was, in addition, an obvious pressing necessity for establishing uniformity in the weights they used. He (COLONEL STRACHEY) was glad to say that the chief of these great and influential bodies had most cordially accepted the proposals of the Government of India, and, as he had already stated, the Company in which Calcutta was most interested—the East Indian—had even outrun the Government in its desire to co-operate in the difficult task of introducing uniformity into the weights of the country. He was glad to have this opportunity of expressing the special obligations that he felt were due in this matter to the Agency of the East Indian Railway Company, and in particular to their able Chief Engineer, Mr. Sibley, and to Mr. Cecil Stephenson.

Although the Government had not yet taken any resolution in respect to the adoption in any of its departments of any of the new measures, it was probable that the convenience of the department with which he was himself specially connected, that of Public Works, would before long lead to the adoption of the metre as the unit of length for the purposes of that department. If this was done, it would be an almost necessary consequence that the Railway Companies should follow the same course. He might mention that he had consulted the heads of all the Engineering Departments of all parts of India, including the Railways, and that, while three-fourths of the officers consulted expressed an opinion that the simultaneous adoption of the metre and kilogram as the units of length and weight was advisable, only one-fourth opposed that conclusion, and of these several opposed any change. He thought that, on such a subject, so large a preponderance of opinion might be received as conclusive, at all events of the certainty that any decision of the Government to adopt the metre as the unit of length for engineering purposes would be well received and cordially responded to. As he (COLONEL STRACHEY) before observed, it was only in the case of weights that the Government desired to obtain any compulsory powers. The Bill provided that, when the Government had satisfied itself by a local public enquiry that the adoption of the new weights in any locality was expedient, it might be ordered. A power was then given to inflict small fines on persons using weights other than those authorized. Also a power was given to search for unauthorized weights. This was the

whole of the compulsory portion of the Bill, and the power of inflicting such fines was limited by a proviso that it must be proved, before a conviction took place, that the authorized weights were procurable for sale at the time and place. The rest of the Bill might be described in general terms as making provision for a proper system of verification and inspection of weights and measures. Experience had everywhere proved that, to ensure proper correctness in the weights and measures of any country where weights and measures were regulated by law, a system of verification and inspection was essential. The verification under the Bill was proposed to be extended to balances as well as to weights. No doubt a considerable length of time must have elapsed before the provisions of this part of the Bill could be put into operation in a systematic manner over the country, generally. But the adoption of properly verified weights of the new description in the chief towns must before long lead to the adoption of similar weights in the rural districts, from which the supplies of produce came which formed the articles of trade in the towns. It was only by a gradual change extending over a long period of time that ultimate success could be obtained in the substitution of a uniform system of weights in place of the infinite variety of existing local weights. They must begin on a moderate scale, and by degrees introduce the new system, first in the largest towns, and afterwards in those of less size, until, eventually, the chief centres of trade had become habituated to it. The process would necessarily be slow, like that of education, but the object in view was of great social importance, and they must be content to attain it by the only means through which it could be attained.

The Hon'ble MR. STRACHEY said that Colonel Strachey had explained so fully the objects of the Bill that he only wished to make a very few remarks on the subject. The reasons which led the Government of India to the determination to adopt the conclusions which the Bill was intended to carry out had been before the public for more than a year, and he believed that he might safely say that they had been generally accepted by all the more intelligent classes of the community as the best which, under the circumstances, were possible. There was, however, one point on which there had been a good deal of misconception, and although the matter had been referred to by Colonel Strachey, MR. STRACHEY would like to say a few words regarding it. There had been a not uncommon impression that, in determining to adopt the kilogramme of the metric system as the unit of our new system of weights for British India, the Government was to some extent influenced by considerations of a theoretical nature, and that it chose that unit because it believed it to be theoretically and scientifically the best. This he would venture to say was a complete error. The

Government did not choose the kilogram as the new standard of weight on any such grounds, and this had been distinctly and fully explained in the papers which had long been before the public and the Council. The Government believed, as Colonel Strachey had all along declared in the series of valuable papers which had led so greatly to the settlement of this question, that all standards of weight and measure were essentially arbitrary, and that no existing standards, whether of the metric or any other system, had really any intrinsic value of their own. The Government adopted the kilogram as a standard of weight for no theoretical reasons, but simply because it was convinced that this was the most convenient unit of weight that could be adopted in the interests of the people of India. It was this conviction alone which led His Excellency's illustrious predecessor, Lord Lawrence, to the conclusion that we ought to go to the metric system for our standard of weight, and he might safely say that no man could be found who was less likely than Lord Lawrence to be led away in such a matter as this by purely theoretical considerations. Lord Lawrence and his Government and the Secretary of State, MR. STRACHEY would repeat, chose the kilogram as the standard of weight, because they were convinced that it was the most convenient standard for the people of India that could possibly be chosen, and it was their conviction, not only that it would be the most convenient at some future time, but that it was the most convenient at the present moment and for the wants of the present generation. The reasons which led the Government to that conclusion had already been fully stated by Colonel Strachey and in the papers before the Council; but MR. STRACHEY would repeat some of those reasons which seemed to him to have a special importance. These papers shewed that it had been generally admitted in all parts of India, that in the interests of the people the most convenient unit of weight which could be adopted was the well known weight called the ser. The existing ser varied greatly, but it might be said generally that it varied from $1\frac{3}{4}$ to $2\frac{1}{2}$ lbs. English, and its average weight might be reckoned at $2\frac{1}{4}$ lbs. Consequently, the Government was led irresistibly to the conclusion that the most convenient unit would be a weight of about $2\frac{1}{4}$ lbs. English. The old British Indian or Government ser was equal to very little more than 2 lbs. That weight, as Colonel Strachey had already explained to the Council, had ceased to have any legal existence, the law on which it was based having been repealed, but it never came into common use. One of the main reasons of its unpopularity was the fact that it was considerably below the average weight of the local sers. MR. STRACHEY thought (as he had written in a paper now before the Council) that there could be no question that the general belief of purchasers that loss would be entailed on them by the diminution of the standard-weight was not merely a fanciful belief. In reality, that belief was an expression of

the well known fact that prices depended, not only on competition, but to a very great extent on custom. The Government was thus, as he had said, led to the conclusion that, in the interests of the people of India, the most convenient ser that could be adopted would be one considerably larger than the old so-called Government ser, and that it ought to be equal to about 2¼ lbs. English. Now it so happened that, by what he might call a fortunate accident, this was for all practical purposes the precise weight of the kilogram of the metric system, and that being so, when the Government adopted the kilogram as the new standard, it was adopting as close an equivalent as could be found to the average ser which had been generally admitted to be the most appropriate unit of weight.

He would not speak now of the many other conveniences and advantages which the Government believed would follow from the adoption of the proposed unit for our new system, but he thought the papers before the public would convince every one who took the trouble to study them, that the proposals of the Government had been really based on no theoretical conclusions, but simply in consideration of the real convenience of the people of India. At the same time, of course, the Government felt that it was an immense advantage that, owing to what he had called the fortunate accident that the kilogram was equal to the ser most commonly adopted throughout India, we should obtain a standard which would give us the means of placing our system of weights in harmony with the system which already prevailed in the greater part of the civilized world, and which there could be very little doubt would ultimately be adopted by England herself.

The results of the proposed measure would of course be very slow. The Government was not so foolish as to suppose that it could force on the people of India, suddenly, any new system of weights, nor had the Government the remotest idea of attempting anything of the kind. The steps must be extremely gradual, and he thought it very probable that the present generation would not see completed the reform which they were now commencing. But it might be confidently said that every step wisely taken to bring about certainty and uniformity of weights and measures would be in the highest degree beneficial. The inconvenience, and, worse than that, the endless and abominable frauds to which the poorer classes were now exposed by the confusion and diversity of weights, were most lamentable, and he thought, as Colonel Strachey had observed, that it was really wonderful that we should have arrived at the year 1870 before any measures had been taken to reform the present state of things.

The Hon'ble SIR RICHARD TEMPLE said that he approved of the substance of the Bill, and concurred generally in the observations that had been made by the Hon'ble mover of the Bill, and by the Hon'ble Mr. Strachey; but there

was one remark which he wished to make. In section 2 of the Bill he found the words "which was equal to the kilogram known in France as the Kilogramme des Archives," and, in section 3, there were the words "which is equal to the metre known in France as the Métre des Archives." SIR RICHARD TEMPLE would like to omit those expressions in both those sections as surplusage and not necessary for the real purposes of the Bill, and also as being somewhat strange and not quite consistent with the practice of British legislation in India. Why there should be a reference to foreign weights and measures he did not understand. Reference to standard British weights and measures would be quite intelligible, because India formed a part of the British Empire. If the new ser and the new metre were equal to the standard weights and measures of France, that was an advantage no doubt, but still, that in no way, primarily or secondarily, directly or indirectly, affected the object of the Bill. As the Hon'ble Mr. Strachey had correctly observed, the object in forming the new ser was not to produce uniformity with the standard on the Continent of Europe, but to form a standard which would be convenient solely for India, which would embody the average standard prevailing here: that being the case, what was the use of inserting any reference to a foreign standard and denomination? They were a British legislature, and why should they go beyond the British nomenclature. He (SIR RICHARD TEMPLE) presumed that other countries did not allude to the British weights and measures. The words to which he had referred were foreign to the purposes of the Bill, and were especially unnecessary, inasmuch as the British equivalent of the new ser was stated in the Bill with great minuteness and precision. It would be rather confusing than otherwise to add a second and foreign equivalent: the Bill would be quite as good, if not better, without these French equivalents, and he would therefore suggest the omission of those words.

The Hon'ble MR. BULLEN SMITH said that he desired in one single sentence to say with what great satisfaction he saw the introduction of the present measure. He felt, as a business-man, that the inconveniences of which mention had been made were not merely ideal ones. Even here, in the Presidency town, we had different sorts of maunds and sers, and as our transactions extended to the Mofussil, the difficulties and inconveniences increased. It was not surprising that there were some objectors to the measure, but he felt convinced that, when the measure was matured, even those who now objected would accept it as a substantial reform and substantial convenience to all engaged in trade.

Colonel the Hon'ble R. STRACHEY said that he desired to make a short explanation in reply to what had fallen from the Hon'ble Sir Richard Temple.

Objection had been taken to the reference, in sections 2 and 3 of the Bill, to the standards of weight and measure in France known as the Kilogramme des Archives and the Mètre des Archives. COLONEL STRACHEY thought that Sir Richard Temple had overlooked what was an essential part of any system of weights and measures, that the only standards that could be used were what in scientific language were termed *material* standards. What was proposed to be the basis of the new system of weights for India was the precise weight of that particular piece of metal which was preserved at Paris, and went by the name of "Kilogramme des Archives." It must be nothing more and nothing less, and in no other way could a precise definition of the new ser or "kilogram" be obtained. It had been ascertained, it was true, some years ago, that two pounds and rather more than two-tenths of a pound avoirdupois were equal in weight to that piece of metal, and a reference had been made to that circumstance in the Bill. But the fundamental fact was that it was the weight of that particular piece of metal which was a kilogram, and the reference to the English weights was only explanatory. Subsequent weighings of the particular kilogram referred to might give results slightly differing from those first arrived at, and, owing to this, the stated equivalent in English weights might be found not to be quite exact. It was an exceedingly difficult task to ascertain with complete accuracy the weight of anything, no two operations producing precisely identical results. Therefore the only safe and exact plan was to refer to some one specific standard piece of metal on which to base any system of weights.

The same remarks would apply with respect to the metre as a standard of length; the metre would be (according to the particular standard adopted) the distance between the centres of two studs at the end of a piece of platinum or other metal of a certain definite length, or between two lines engraved on it. That was a metre, nothing more and nothing less. In this way the English yard was defined, and it was the only way in which any measure could be defined. The law simply said that a mass of metal was deposited as the standard of weight and called the pound, and that a certain bar of metal was deposited as the standard of length, the distance between specified marks on which was the yard. For these reasons he had thought it necessary to introduce the specific reference to the material standards of weight and length kept at Paris.

Major General the Hon'ble SIR HENRY DURAND said that he did not understand the objection raised by Sir Richard Temple to be precisely that to which Colonel Strachey had replied. Sir Richard Temple, as SIR HENRY DURAND understood him, objected to having a foreign standard instead of an English one: it did not matter whether the English standard was precisely the

same as the foreign standard advocated by Colonel Strachey or not, though certainly it was preferable to have it precisely the same. SIR HENRY DURAND quite agreed that it would be of immense commercial advantage, as well as a great simplification in trade transactions, that the weights should be precisely the same as those in use on the Continent of Europe; but the objection taken was that the standard should be an English standard, and, if he understood his hon'ble friend, he would put it in this way. Suppose a contention arose before the Courts with reference to the standard, and it came to a question of reference, how were you to carry out a reference of that sort to a foreign standard in a foreign capital over which we had no sort of control, and in the case of a war occurring between the two countries, how were you to carry out the reference? In the objection raised, there was a practical conclusion that it would be as well to eliminate the words which had been referred to, and to make the standard a practical English standard, although precisely the same as the French standard.

The Hon'ble MR. STEPHEN said that discussions of this kind were better suited to the Select Committee to which the Bill would be referred. He would, however, just make one remark to remove a slight misconception that appeared to exist. He presumed that the Government of India would have no objection to having a standard of the exact weight and keeping it in Calcutta. A standard was a material thing, and the keeping of such a standard would tend to the convenience and advantage of the mercantile community.

His Excellency the COMMANDER-IN-CHIEF said that he thought that the distinction taken was one of words rather than of substance. As he understood the Bill, they were about to introduce into India a system of weights and measures exactly similar to the system existing in France for many years. It appeared to His Excellency that, if they went to give an exact definition of the system they were about to introduce, they could hardly make the law plainer than by making a reference to the system which they were about to copy. He could not understand that there was anything degrading to the English law because it had reference to the system of weights and measures of another country, when we were about to copy that system. We could not describe that system merely by reference to a certain weight or measure; what we wanted was a practical reference to that which had been accepted scientifically as a standard. He could not see that the distinction was anything more than one of words and not of substance.

Colonel the Hon'ble R. STRACHEY said that the remark which had fallen from the Hon'ble Mr. Stephen entirely concurred with his own views, and that,

in fact, the provisions of section 6 of the Bill entirely met the point that had been raised. There were to be provided, for each district in India for which the Government considered it necessary to provide standards, material standards which would be the only standards recognized in that district. The Bill declared how the magnitude of the new standards was to be ascertained, but it was left entirely to the Governor General in Council to take the needful steps for providing the standards, and for securing their proper conformity with the description that was given of them in sections 2 and 3 of the Bill. Such standards having been provided, no question could arise regarding their accuracy under the law.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to regulate the Weights and Measures of British India—The Hon'ble Messrs. Strachey, Stephen, Gordon Forbes, Cowie, Chapman, Bullen Smith, and Cockerell and the Mover.

The Council adjourned to Friday, the 18th March 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 11*th March* 1870.

Office Supdt Govt Printing—No 8772 L. C.—18 3-70—200.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th March 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Honour the Lieutenant Governor of Bengal.

His Excellency the Commander-in-Chief, K. C. B., G C. S. I.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. STEPHEN introduced the Bill for the repeal of certain obsolete enactments, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that, when the Bill was last before the Council, he explained the object with which it had been introduced, which was to relieve the Statute-book of a considerable number of obsolete enactments as a step towards the consolidation and reproduction, in a better form, of the Regulations and Acts in force. The Bill itself consisted of only one section, which had been worded with great care. The wording had been taken from a Statute prepared in England by the most experienced Parliamentary Draftsmen, and he might shortly describe its effect. It was to repeal or sweep away a quantity of Acts which had become useless, but not to invalidate any institution dependent on them or any Act passed under their authority. There was no clause providing that the repeal of repealing Acts should not revive Acts repealed by them. But it was not necessary to have a provision to that effect in the present Bill, because, by the General Clauses' Act, I of 1868, it was provided that, in order to effect the revival of a repealed Act, it should be necessary expressly to state such purpose; it would therefore now be sufficient simply to repeal the repealing Act. The schedule to the Bill

was of great length, but the length was more apparent than real. A very large portion of it consisted of the repeal of repealing sections of Acts, the object being to render the Statute-book as compact as possible. He proposed to repeal every repealing section yet passed, down to the repealing section of the Court Fees' Act, VII of 1870. He hoped that some other less cumbrous way might be devised of carrying out repeals in future. That accounted for a considerable number of the sections repealed by the present Bill. Some persons might think that it was hardly worth while to effect such a small reform; but the Council would see the extent to which the mere titles of the sections amounted, and it was obvious that the sections themselves must amount to much more. A good many repealed Acts were needless because they had done their work. For instance, Acts like 37 Geo. III, c. 142, s. 17, which provided for the transfer of records from one court to another: those transfers having been effected long since, there was no use in keeping the Acts providing for the transfer on the Statute-book. So, a statute like 11 Geo. IV & 1 William IV, c. 75, for the relief of sufferers by the insolvency of a Government officer in Madras many years ago, was no longer necessary. Other Acts had been superseded without repeal; as, for instance, Act XI of 1844, as to the administration of justice and despatch of business in the Supreme Court at Fort William, had been since superseded by the Charter and the Code of Civil Procedure. So, several enactments with regard to salaries and pensions had been superseded by later enactments. Besides those enactments which had become superfluous, and besides the repeal of superfluous sections, there were a certain number of Acts of Parliament which the Council had a right to repeal under the Indian Councils' Act, and which, although in force, had absolutely ceased to have effect by lapse of time. There were some extraordinary provisions in two statutes of George the Third (21 Geo. III, c. 70, secs. 11 and 15, and 37 Geo. III, c. 142, s. 15) about the registration of Natives of India who held office, who were incapacitated from receiving salaries unless registered. These enactments, if acted upon, would produce most disastrous results. There was also a statute (33 Geo. III, c. 52, s. 137) which incapacitated all Her Majesty's subjects from various branches of trade, which rendered it penal in them, for instance, to trade in rice, tobacco or betelnut, and which would enable evil-disposed persons to bring actions for the purpose of harassing others. There were not very many Acts of this nature, but there were a certain number, and he hoped they would be able to sweep away the whole of them, and to take away a great number of provisions which were unsuited to the present times. There were also some obsolete provisions which empowered the Governor General in Council to hold Quarter Sessions four times a year. He did not know whether the Governor General in Council ever had done so; but the provision (which was to be

found in 13 Geo. III, c. 63, s. 38) was certainly useless now. There were also other Acts conferring powers on the Governor General in Council, which were also clearly inapplicable to the present times: they applied to the time when the Governor General in Council was an appellate Court of record. It was just as well that these provisions should be put an end to, even if only to shorten the Statute-book. All these matters would be carefully considered in Committee, so that nothing should be repealed which was of use and ought to remain in force. He had every hope that the result would be to diminish the Statute-book to a considerable extent, and thus be a step towards the consolidation of the law and the preparation of a new edition of the Statute-book in a better form.

The Motion was put and agreed to.

FEMALE INFANTICIDE BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill for the prevention of female infanticide be taken into consideration. He said that the Select Committee had made very few alterations, for the most part of no great importance, in the Bill as introduced. The principal alterations were these:—It was originally provided that rules should be made for prescribing the manner in which information should be given to the proper officer of births, marriages and deaths. Doubt was expressed whether, as the section was originally worded, it would be open to the Local Government to prescribe by whom information should be given. To remove that doubt, an alteration had been made. The Committee also recommended that the rules should provide that information should be given when births, marriages and deaths were about to occur. A clause had also been added to section 6, providing that, in the case of neglected children, the Magistrate of the District might compel the person responsible to make a monthly allowance for their support, not exceeding fifty rupees. Some other verbal alterations had been made; among them one, which was an obvious improvement, in the title of the Bill.

There was nothing else which it was necessary for him to refer to, the object of the Bill having been so fully explained on former occasions. The Bill had been so universally approved in all quarters, that it seemed unnecessary to take up the time of the Council in referring to the matter further. If the Bill should today receive the sanction of the Council, it would immediately be the duty of the Local Governments and Administrations to whom the Bill referred to proceed to make rules under the Act. It would be obvious that the success or failure of the measure would depend on the manner in which the rules were made. The Government would have the great advantage, as had already been stated

when the time came for drawing up the rules, of the advice and co-operation of His Highness the Mahárájá of Jaypúr, which MR. STRACHEY was sure would be of high value and importance. He would only add that he thought they might confidently hope that the result of this measure would be to enable the Government to repress this abominable practice, which had too long been suffered to remain as a reproach to our administration.

The Motion was put and agreed to.

The Hon'ble Mr. Strachey then moved that the Bill as amended be passed.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. CHAPMAN introduced the Bill to make further provision for the regulation of Native Passenger Ships, and moved that it be referred to a Select Committee with instructions to report in a week. He said that the chief object of this Bill was to prevent the overcrowding of Native Passenger Ships proceeding to ports in the Red Sea with pilgrims *en route* to Mecca. When he obtained leave to introduce it, he instanced to the Council some of the cases of overcrowding that had recently been brought to notice, and which had induced the Government to take action in this matter. He thought it would be impossible to exaggerate the sufferings the passengers must have been subjected to on those occasions—sufferings which must have equalled any which slaves in former days endured when making the middle passage. There was, however, this material difference between the two cases. Here, the sufferings were voluntarily incurred, and they had to protect the people against themselves. The Muhammadans set so high a value on a pilgrimage to Mecca that they were willing to undergo any amount of distress and privation to accomplish it; and the poor, who were only able to undertake the journey on the cheapest terms procurable, were not, under the circumstances, likely to complain of the treatment they were subjected to. He thought the fact of these sufferings being to a great extent wilful ought not to prevent them from endeavouring to lessen them as much as possible. A very intelligent and influential Muhammadan gentleman had recently told him (MR. CHAPMAN) that his co-religionists would be most thankful for any measure that would have the effect of mitigating the hardships they now had to encounter in making these pilgrimages. Another reason for legislating in this matter was this:—The Ottoman Government had of late years subjected all vessels arriving from India to very strict quarantine; and the belief was general that cholera and other diseases were introduced into Europe through Indian pilgrims arriving at Mecca. Whether this belief was well founded or not,

he thought it behoved the Government to take care that proper sanitary arrangements were enforced on these vessels, and he need hardly remark that sufficient space and ventilation were not the least important points to be attended to. These were the principal reasons for taking action in this matter. He would now endeavour briefly to explain the state of the existing law, and the alterations they proposed to make in it. The application of the present Act (XXI of 1858) was limited to the cases of vessels proceeding from ports under the jurisdiction of the British Government. The consequence was, that its provisions were evaded by owners of ships, after clearing out from these ports, putting into others belonging to Foreign States, and, regardless of all restrictions, stowing away any number of passengers they could procure. They proposed to remedy this defect by extending the operation of this Bill to all ports within the dominions of Princes and States in India in alliance with Her Majesty, and to all ships commanded or owned by subjects of Her Majesty conveying passengers between all ports and places situated east of the Cape of Good Hope and ports and places in the Red Sea and Persian Gulf. They proposed, also, to render masters violating the provisions of the Bill liable to imprisonment as well as fine; and, in order to facilitate prosecutions, they proposed that depositions taken before Consuls, and authenticated by their signatures, should be admissible as evidence. These were some of the chief points in the Bill. But the main safeguard against overcrowding would, he (MR. CHAPMAN) thought, be found in the provision obliging masters going to the Red Sea to obtain a clean bill of health at Aden, which bill was to be withheld, if the ship had a greater than the prescribed number of passengers. He trusted the Bill would be effectual in suppressing the horrible sufferings which they knew were now entailed on the poor people making these voyages. It seemed to him the Government had a perfect right to insist on passengers on board ships sailing under British colours being treated with common humanity. And this was all the present Bill aimed at.

The Motion was put and agreed to.

REGULATIONS AND ACTS LOCAL EXTENT BILL.

The Hon'ble MR. COCKERELL, asked leave to postpone his Motion to introduce the Bill to consolidate and amend the law relating to the local extent of the general Regulations and Acts, and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities.

Leave was granted.

The following Select Committees were named :—

On the Bill for the repeal of certain obsolete enactments—The Hon'ble Messrs. Gordon Forbes, Chapman and Cockerell and the Mover.

On the Bill to make further provision for the regulation of Native Passenger Ships—The Hon'ble Messrs Stephen, Gordon Forbes and Cockerell and the Mover.

The Council adjourned to Friday, the 25th March 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 18*th March* 1870.

Office Supdt Govt Printing —No 5871 L C —23-3 70.—200

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 25th March 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

PAPER CURRENCY BILL.

The Hon'ble SIR RICHARD TEMPLE, in moving for leave to introduce a Bill for the further amendment of Act No. XIX of 1861, said—

"The point of amendment will be found on reference to section X of the said Act, which runs thus—

'The whole amount of the bullion and coin so received for notes shall be retained and secured to pay such notes, with the exception of such an amount not exceeding four crores of rupees such as the Governor General in Council shall fix. The amount so fixed shall be invested in Government Securities.'

"The limit of investment then is fixed by law at four crores of rupees, or four millions sterling. We now propose to increase that limit to six crores or six millions. Before explaining the grounds of this proposal, I should state that it has received the express sanction and approval of the Secretary of State.

"In order to make the above grounds clear, I must ask the Council to revert to the principles on which our Paper Currency was established. These principles will be seen from the following extracts.

"In March 1860, the Secretary of State, addressing the Government of India, wrote:—

'The sound principle for regulating the issue of a paper circulation is that which was enforced on the Bank of England by the Act of 1844, *i. e.*, that the amount of notes issued on Government Securities should be maintained at a fixed sum, within the limit of the smallest amount which experience has proved to be necessary for the monetary transactions of the country; and that any further amount of notes should be issued on coin or bullion, and should vary with the amount of the reserve of specie in the Bank, according to the wants and demands of the public.

'The important condition is thus realised, that the mixed currency of notes and coin should vary in quantity exactly as if it were wholly of coin.

'In this country the smallest amount of notes required had been ascertained by long experience; but what that quantity may be in India, can only be ascertained in like manner; and as it is impossible, at present, to say what the minimum amount of notes in India will be, the proceedings for determining this point must necessarily be tentative and experimental.'

* * * * * * * * *

'As the circulation of notes is extended beyond the immediate neighbourhood of Calcutta (and the advantages to be derived from the system will be very incomplete until this is done), a much larger amount of notes will be required; and under those circumstances, the limit of the fixed amount may be raised. But as this should only be done after full experience of the working of the system, I think it better that any change should be made, either by legislative enactment at the time, or by an order of Government, with the sanction of the Secretary of State in Council, to be published in the Gazette, power for doing this being contained in the Act which may be passed on the subject.'

"Subsequently, in 1861, the following year, the Secretary of State addressed the Government of India further as follows—

'4. The principle now adopted is that on which the currency of this country is based, namely, that a fixed amount of notes should be issued on Government security, and any amount beyond that should be issued on bullion or coin. The result will necessarily be, not that the quantity of paper in circulation is identical with the quantity of coin which would otherwise exist in the country, but that the variation in the quantity of paper and coin together corresponds with the variation which must have taken place if the circulation had been altogether of coin.'

"Next, inasmuch as my predecessor, Mr. Laing, took special interest in the existing system of our Paper Currency,—indeed, it was under his auspices that the present law was framed—it is important to see what he recorded at the time. In 1861 he wrote thus:—

'This majority has, however, been divided into two sections, one who hold that, to the condition of convertibility must be added that of absolute identity with the metallic circu-

lation which it displaces; and that these two conditions can only be secured by making all Paper-issues the representatives of actual coin or bullion in the vaults of the Bank or Treasury, beyond a certain fixed issue, strictly limited within the bounds to which experience has shown that no conceivable contraction of the currency can approach.'

* * * * * * * * *

'I assume, therefore, that, in accordance with the opinion intimated by Sir C. Wood, the first consideration, in introducing a system of Paper Currency in India, must be to place its convertibility beyond question.

'For this purpose, I know of no other means than to adopt the principles of the English currency-laws, limiting the amount of fixed *minimum* issue for India to a figure which experience may show to be clearly within the mark to which the Paper circulation can be reduced under any conceivable circumstances.

'The present authorized issues of the three Chartered Banks of India are £5,000,000, *viz.*—

Bank of Bengal	£ 2,000,000
„ Bombay	„ 2,000,000
„ Madras	„ 1,000,000

* The actual issues are—

Bengal	£	1,964,000
Bombay	„	1,087,000
Madras	„	266,000
TOTAL ...	£	3,317,000

† The lowest issue of Bank of Bengal was £1,030,000.

'Against which, by the charters, one-fourth must be held in specie, leaving £3,750,000 as the amount which may be issued against securities*; and the lowest amount to which the issues were ever reduced during the mutinies was, I am informed, about £2,000,000.†

'I think it would be unsafe, with our present information, to assume a much larger amount than that of the present authorized Bank-circulation as the *minimum* limit which it was prudent to issue, against anything but actual coin or bullion; and even this limit should only be approached gradually and with due caution. No doubt this limit may be exceeded in course of time, as the Paper-circulation becomes generally adopted; but it will always be possible to amend the Act, and India has a right to know that the limit which has been fixed upon as safe under existing circumstances, shall not be exceeded on merely speculative grounds, or without a formal application to the Legislative Council for a fresh Act, giving time for reflection and opportunity for discussion.'

"Such then being the principles on which the present law was framed, I have to explain why the limit which it imposed, of four crores for the investments, ought to be extended to six, in accordance with those principles, it having been acknowledged, at the time, that the original limit was only experimental and might thereafter be raised according as circumstances might warrant.

"I have shown that the prescribed and established basis of our Paper Currency in India is this,—that the lowest amount be estimated to which, according to all reasonable experience, the Paper Currency might be expected to fall; tha a

portion of the money paid in exchange for the notes be invested in Government Securities up to the above amount, and that all notes above that amount must be issued against cash and bullion alone. The question, therefore, now would be this,—what, under the circumstances of the currency, is the lowest amount to which our circulation could reasonably be expected to fall? Then, given that amount, are we not justified in investing up to that limit?

"The four millions limit set forth in Act XIX of 1861 was necessarily assumed on the data of the known circulation of the three Presidency Banks in previous periods (the right of issuing currency-notes was transferred from 1st March 1862 from these Banks to the State). It was considered, in the circumstances of that day, that the circulation could not be reasonably expected to fall below four millions.

"Now, since 1861, what has been the circulation of the Government Paper Currency? I give the amounts of average circulation year by year in millions and fractions of millions:—

	Millions. £
1862-63 ...	4·42
1863-64 ...	5·23
1864-65 ...	6·88
1865-66 ...	7·73
1866-67 ...	8·99
1867-68 ...	9·29
1868-69 ...	10·14
1869-70 to date	10·53

"For the current official year 1869-70, the amounts have been—

	Rs.
7th April ...	9,74,25,840
„ May ...	9,83,86,380
„ June ...	10,72,97,130
„ July ...	10,72,53,300
„ August ...	10,44,63,350
„ September ...	10,07,65,210
„ October ...	10,39,10,050
„ November ...	10,97,12,500
„ December ...	11,33,83,900

"In round numbers our circulation has touched 11⅓ millions. It has risen from 3⅔ millions in March 1862 to 11⅓ at the end of December 1869; in other words, it has increased by 7⅔ millions in eight years. And though there have been, and are, fluctuations, still, on the whole, the increase has been steady and progressive.

"Within the same period, of course, the public revenue, the private wealth, the internal traffic, the external commerce, the monetary transactions of the country have proportionally increased. In fact, the increase of the note-circulation is only an index or consequence of the increase in all these other respects. When we remember that since the Paper Currency was set in motion, the external traffic of the country has increased by some forty millions sterling of annual value; that an internal traffic by rail of six millions of tons annually has arisen; that the public revenue and the public expenditure have increased each by ten millions; that some fifty millions sterling of British capital have been expended in India; that the banking-business of the country has increased beyond calculation—, we see that the development of the Paper Currency has only kept pace with the general improvement of the country.

"Against a circulation of upwards of eleven millions, we have a reserve in Government Securities of four millions, and a reserve in cash and bullion of more than seven millions. According to the experience of other countries possessing a Paper Currency, I should say that, in India, the reserve in Government Securities bears a somewhat unduly small proportion to the reserve in cash and bullion. In other words, the Government in this country is hardly deriving from its Paper Currency the full advantage to which it is entitled.

"Under these circumstances, what is the lowest amount to which our circulation could reasonably be expected to fall? It might readily be expected to decrease under certain contingencies by two or even three millions; say it might possibly decline to eight millions. But it is difficult to anticipate its declining to five or even to six millions. This would represent a fall of fifty per cent. There has never been an instance of any such fall since we have had a Paper Currency. And this, too, notwithstanding that we have passed through political convulsions. For instance, in the period of the mutiny and rebellion of 1857, the annual average of the circulation of Bank of Bengal notes was £1,524,000, against £1,471,000 in 1856; £1,413,000 in 1858; £1,400,000 in 1855; and £1,717,000 to £1,825,000 during May to August 1867; *i. e.*, it was highest in the worst months of the mutiny. After the fall of Delhi in September 1857, the circulation declined owing to a depression of trade, and it continued depressed up to February 1858, and fell again in June 1858.

"The statistics of the Currency Note circulation are still more encouraging, the fluctuations in any year having been generally within the amount of increase of that twelve-month over the previous year, as may be seen from

the Statement which I shall now read. The figures represent millions and fractions of millions.

Currency Note Circulation.

	At the end of the first month of the year	During the Year	At the end of the last month of the year	Monthly average for the year
	£		£	£
1862-63	4 10	Progressive	5 13	4 42
1863 64	5 01	Stationary till 31st October, when it was £ 5 63 29th February 1864 „ 5 08	5 68	5 23
1864-65	6 04	Progressive	7 18	6 88
1865 66	7 46	Progressive till 30th September, when it was ... . £ 7 84 28th February 1866 . . „ 6 87	7 02	7 73
1866-67	7 87	Progressive to 30th November, when it was ... ... £ 10 09 31st March 1867 ... „ 8 09	8 09	8 99
1867-68	7 84	Progressive till 31st December, when it was ... £ 10 32 31st March 1868 ... „ 9 07	9 07	9 29
1868 69	8 92	Progressive till 31st October, when it was £ 10 61 31st January 1869 ... „ 10 20 28th February „ ... „ 10 63	9 96	10 14
1869-70 to date.	9 80	Progressive till 30th June, when it was .. £ 10 80 30th September 1869 ... .. „ 10 18 31st October 1869 ... . „ 10 76	31st Dec 11 31	10 53

"It is seen that, in 1866-67, there was a sudden fall of two millions, but it was the mere collapse after a casual inflation, the amount to which the circulation fell up to 30th April 1867 being still four-fifths of a million in excess of the circulation on 30th April 1866.

"In 1865-66, a fall of one million after the 30th September of that year did indeed reduce the circulation to an amount less by £600,000 than that of 30th April 1865, but coincidently with this fall, the following amounts of silver-bullion were lying in the Currency Department, *viz.*—

(Millions and fractions of millions)

	£
On 30th September 1865	1 26
„ 31st October „	1 26
„ 30th November „	96
„ 31st December „	1 58
„ 31st January 1866	1 12
„ 28th February „	1 08
„ 31st March „	1 01
„ 30th April „	35

"The pressure on the occasion above alluded to occurred in December of 1865, in the Christmas season. But probably it would not have been felt had the bullion been available as coin.

"Moreover, the circulation of 31st December 1869 exceeds that of 30th April 1866 by four millions, while the amount of the invested reserve is the same as in the latter year. The silver-bullion in the Currency Department on the last day of each month in 1869 has been as follows:—

January	1·49	July	1·58
February	2·10	August	·99
March	2·09	September	·98
April	2·42	October	1·51
May	2·37	November	1·58
June	2·07	December	1·45

This amount of bullion is unduly high, and we may have to issue orders for a portion of it being coined.

"If, then, we cannot reasonably apprehend the currency-note circulation falling to six millions, we might legitimately, under the fundamental principle of the Paper Currency, ask for power to invest up to that amount. But if we hesitate to invest up to that amount at present (as I should hesitate), we might at all events invest up to nearly five millions.

"Supposing the average circulation to be standing at not less than eleven millions with investments up to five millions; then, of the total reserve, there would be 46 per cent. in securities and 54 per cent. in cash and bullion. In that case the proportion of securities would be moderate, and the proportion of cash and bullion strong. In England the total reserve of securities represented, on 31st December 1865, 51 per cent.; on 31st December 1866, 46 per cent.; on 31st December 1867, 42 per cent.; while that of cash and bullion on those dates represented 49, 54 and 58 per cent., respectively, of the total circulation.

"As already stated, I would not exercise the power of investing, if it were given us, up to the full amount immediately. I would do so gradually. For some time to come it might not be desirable to go beyond five millions. But as it might be expedient that such application to the Legislature should be rare, I would ask that the limit be extended to six millions.

"In order to show how careful and tentative our practice has been in making these investments hitherto, and how fully we may be trusted to

* This is correct, notwithstanding the fact that we have recently invested more than half a million. In 1865-66 the invested reserve was four millions. Then half a million of that was gradually sold. We have since invested half a million, bringing up the amount again to four millions.

continue to proceed with equal caution, I would offer the following states of the fluctuations of the reserve in Government securities from 1862 to 1869:—

April 1862	Rs.	40,00,779
May to October, inclusive, 1862	„	43,48,861
November 1862 to March 1863	„	68,48,861
April and May 1863	„	67,24,580
June 1863	„	88,24,580
July „	„	89,05,753
August and September 1863	„	95,44,078
October 1863	„	1,10,14,078
November „	„	1,92,15,729
December 1863 to February 1864	„	2,00,65,770
March 1864	„	2,48,72,787
April „	„	2,70,16,986
May to December 1864	„	3,03,95,011
January to March 1865	„	3,57,45,011
April to August „	„	3,98,01,961
September 1865 to May 1866	„	3,98,02,532
June 1866	„	3,89,55,182
July „	„	3,88,37,833
August „	„	3,71,32,135
September 1866	„	3,64,62,301
October to December 1866	„	3,64,29,410
January 1867	„	3,36,59,923
February „	„	3,36,07,229
March 1867 to May 1868	„	3,25,20,548
June to September „	„	3,25,64,956
October 1868	„	3,30,10,686
November „	„	3,72,80,061
December 1868 to February 1869	„	3,91,73,228
March and April 1869	„	3,91,30,061
May 1869	„	3,95,51,348
June „	„	3,97,61,992
July „	„	3,99,72,635

"It will hence be seen that the securities gradually rose in amount from half a million in 1862 to four millions in 1866. Then they fell gradually to $3\frac{1}{3}$ millions in 1868. After October 1868, they gradually increased again to close on four millions, the legal limit.

"Such, then, are the reasons why I propose to raise the limit from four to six crores of rupees, or from four to six millions sterling.

"There is another proposed amendment in the Act which I may briefly explain; it is this: In certain sections of the Act, it is said that the Mint Master may be the Head Commissioner. Doubtless, it was not the intention

of the law that the Mint Master must always be the Head Commissioner. Still, while these words remain as they are, it may be often understood that the Mint Master generally ought to be the Head Commissioner. But in reality there is no necessary connexion between the Mint and the Paper Currency Department. The Mint Master may, and often does, make a good Paper Currency Commissioner; but he has no special qualifications for this work; and he has to perform it in addition to his proper duties. As the Currency work more properly pertains to officers who have received training in the Finance and Account Departments, it may often happen that the work can be best entrusted to those officers. I therefore propose to omit the words in question from the Act, and to leave the Government quite free to nominate whom it sees fit for the Head Commissionership.

"There is one more amendment which I may mention, which is this.

"Though there may be nothing in the Act to prevent the Commissioner holding the currency-reserve in the hands of any officers subordinate to him for that purpose, but sanction seems necessary to the deposit of bullion-reserve in the hands of the Mint Master for coinage purposes, and if it be determined to distribute a portion of the reserve in important Mofussil treasuries, in order to cash notes for the convenience of the public, it might be well to take advantage of this Bill to introduce a clause empowering the Head Commissioner or Commissioner to hold a certain portion of the reserve or unissued notes at any Government treasury fixed with the approval of Government, for the purpose of affording greater facilities to the public for the issue or encashment of notes, provided that all such notes or coin so deposited shall be held at the sole disposal of the Currency Commissioner, and shall never be used for any other purpose than those allowed by Act XIX of 1861, and shall be separately held from all other Government moneys, and shall be subject to such rules for custody and verification as the Head Commissioner, with the approval of Government, may from time to time appoint."

The Motion was put and agreed to.

LAND ACQUISITION BILL.

The Hon'ble Mr. Strachey presented the Report of the Select Committee on the Bill to consolidate and amend the law for the acquisition of land needed for works of public utility.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. CHAPMAN presented the Report of the Select Committee on the Bill to make further provision for the regulation of Native Passenger Ships.

ELPHINSTONE LAND AND PRESS COMPANY, LIMITED, BILL.

The Hon'ble MR. CHAPMAN, in moving for leave to introduce a Bill to enable the Elphinstone Land and Press Company, Limited, when in voluntary liquidation, to sell their property to Government, said that this property had been reclaimed by the Elphinstone Company from what was formerly a noisome portion of the foreshore of the harbour of Bombay. The Company was formed in 1858, and was called after the lamented Lord Elphinstone, than whom, he (MR. CHAPMAN) humbly ventured to think, a braver gentleman or a wiser Ruler never governed an Indian Presidency. In 1862, the Company entered into an agreement with the Government to provide upwards of one hundred acres of land for the terminus of the Great Indian Peninsula Railway and other purposes. In return they obtained the right to reclaim from the sea, for their own advantage, about two hundred and fifty acres. At first sight, and, in a simple business-point of view, the bargain was an exceedingly favourable one for Government. They conceded what to them, in its natural state, was quite valueless, and in return obtained property which they were bound to provide for the Railway, and which was estimated to have cost over three hundred thousand pounds to reclaim. He (MR. CHAPMAN) had said that the bargain was a good one, viewed in a purely commercial light; but, politically, it was unquestionably a mistake. By it the Company secured a monopoly of the harbour-frontage immediately opposite the Native town, and were in a position to subject a very considerable portion of the entire trade of the port to wharfage and other dues. He ought to mention that the Government had the foresight to reserve to themselves the right to regulate the rates at which these dues were to be levied. But the transaction was nevertheless one which should not have been entered upon; and for the sake of obtaining an immediate pecuniary advantage, however large, the Government should not, in the interest of the public, have allowed the foreshore to pass out of their possession, and have given the Company so dominant a position. Shortly after the contract had been entered upon, an unexampled tide of prosperity set in to Bombay, owing to the American war, and to the stimulus consequently given to the cotton-trade. The Company, the managers of which were the enterprising firm of Messrs. W. Nicol and Co., set to work with their able and energetic Engineer, Mr. Ormiston, to carry out

their contract. He (MR. CHAPMAN) supposed this country had never witnessed such extraordinary vigour in the prosecution of any public work as was then displayed. Gangs of stalwart Chinese labourers were imported, a fleet of barges was constructed on the most improved principles to bring earth from the other side of the harbour, and a regular service of trains was established to bring in material from Coorla on the main land. In short, everything that a combination of capital, skill and energy could do was done. In the meantime the speculation-mania rose to its height, shares in Companies of all kinds and descriptions commanded ridiculously high prices, and, in common with those of the wildest schemes, the shares of this solid *bonâ fide* Company reached quite a fabulous premium—at one time, he believed, as high as eighteen thousand pounds. As the Council were aware the era of prosperity was not of long duration, and a time of humiliation was at hand for Bombay. Consequent, mainly, on the cessation of the American war, and the extent to which insane speculation had been carried, the whole trade of the place collapsed, and the ruin became general. The property of the Company participated in the general depreciation; and the shares fell to fifty per cent. discount. In the meantime the Company had almost entirely completed their agreement with Government. Out of a subscribed capital of two millions one hundred and sixty thousand pounds, one million two hundred and eighty thousand had, at this time, been paid up, and had been nearly all expended. The Company felt it would be impossible in the then state of affairs to call in the remainder of their subscribed capital. There could be no doubt that, in the year 1866-67, the Company were in considerable difficulty. Government were applied to for assistance, which resulted, he (MR. CHAPMAN) believed, ultimately in a loan of one hundred thousand pounds. During the last two years the value of the stock had revived; and the Company had now agreed to sell their entire property to Government at the par value of the paid-up capital, such value to be paid in four per cent. stock at the price of ninety-three. He understood it would be necessary to issue stock to the amount of one million seven hundred thousand pounds, which, at ninety-three, would represent one million eight hundred and thirty thousand. In consideration of this outlay, Government would secure, he believed, a property of two hundred and fifty-nine acres that had already been reclaimed, inclusive of the one hundred and twelve acres agreed upon in the first instance to be reclaimed for the Railway Company. A further expenditure of about a million would be required to complete the project as originally designed. Looking to the vast commerce that was now certain to concentrate in Bombay, consequent on the opening of the Suez Canal and the completion of the Railway system, the advantage to the

public of this fine property, with its extensive water-frontage and facilities for the construction of docks, being in the hands of Government, was great. He understood the idea was that its management should be placed under a Trust, and he thought there was little fear of the State revenue suffering any eventual loss from this investment. He had mentioned these particulars, because he thought it would be interesting to do so. But in point of fact this Council had nothing to do with the past history of the property, or with the policy of the Executive Government in purchasing it. All they were asked to do was to formally ratify, by an enactment, the purchase that had been agreed upon. The Law Officers had expressed a doubt whether, in the absence of an express enactment, Voluntary Liquidators could carry out the sale in the manner proposed, and considered that dissentient shareholders might appeal to the interference of the Court. He wished to explain that there was nothing in this Bill to interfere with the volition of the shareholders. Dissentients, as the law now stood, could not prevent the majority from selling the property if they chose to do so; but they might perhaps prolong the proceedings by objecting to the manner in which payment had been arranged. Hence the necessity for the present Bill being brought under the consideration of the Council.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble MR. CHAPMAN then introduced the Bill and moved that it be taken into consideration. He said that, as he had already endeavoured to explain, this Bill was of an entirely technical character. It had been drawn in consultation with, and with the concurrence of, the legal advisers of the Company, and it had for its object the formal ratification of a transfer of property which both parties were desirous to effect. They, as he had already said, had no concern whatever with the considerations which had induced the Government on the one hand, and the Company on the other, to enter upon this transaction. The Bill would authorize the Voluntary Liquidators to receive payment for the property in the form of Government paper, and would prevent dissentient shareholders taking exception to this procedure and appealing to the Court.

The Hon'ble MR. STEPHEN said there was just one point which he wished to mention. It might appear rather remarkable that this Bill was not intro-

duced in the legislature at Bombay; but the reason of this was that the effect of the Bill would be to interfere to a certain extent with the jurisdiction of the High Court of Bombay, which interference was beyond the competency of the Council at Bombay. As the Hon'ble Mr. Chapman had pointed out, it would produce no difference if this Bill were passed by the local Council, except the delay which a single dissentient shareholder might cause (he would have no power to prevent it) by instituting proceedings in the High Court of the Presidency.

The Hon'ble SIR RICHARD TEMPLE said that the arrangement which the Hon'ble Mr. Chapman had described would not involve any annual charge on the general revenues of the country: the charge would be transferred to the Bombay Harbour Trust Fund.

His Excellency THE PRESIDENT said that the negotiations between the Supreme Government and the Government of Bombay, were conducted on the distinct basis that, if the purchase was effected, such measures would be taken by the Bombay Government as would be necessary to secure the payment of the interest of the loan and the creation of a Fund for the gradual extinction of the capital from the Port and Harbour Fund of Bombay, so that, in lending the money, the Government of India did not intend to throw any charge on the general revenues of the country.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN also moved that the Bill be passed.

The Motion was put and agreed to.

LOCAL PUBLIC WORKS BILL.

Colonel the Hon'ble R. STRACHEY, in moving for leave to introduce a Bill to facilitate the construction of works of public utility from Local and Municipal Funds, said that, during the last few years, the Government of India had frequently been asked by the various Local Governments to make advances for works of local improvement. In many cases these proposals had been made for State money for carrying out works of local improvement in towns: in several cases the object to be effected had been the improvement of water-supply; in other cases, it had been to improve drainage. Occasions also had occurred in which the Local Governments had asked the assistance of the Government of India in carrying out other improvements. The Madras Government had asked and obtained assistance in carrying out the excavation of a canal called the East Coast Canal, which made a communication between Madras and the districts to the north and south of that city, and admitted of permanent naviga-

tion along the Coast during that time of the year when the sea coasting trade would be stopped. There had been other cases in which small demands had been made on the Government of India. In almost all, sufficient grounds had been shown for making such advances, and the Government of India had never hesitated in assisting the Local Governments when satisfactory reasons had been established. But it had been ascertained that, in almost every case, excepting those of the Municipalities established for managing the Presidency towns, the Municipal bodies had not the power of legally entering into obligations under which they could raise money by law. These bodies were administrative authorities appointed to manage Local Funds, and had no power to deal with anything but the revenue that came into their hands year by year. The consequence was that the Government of India, in making these advances, had in reality no security for the loans it made to such bodies. It was the desire of the Government of India to do everything in their power to facilitate the carrying out of works of local public improvement, and with this object it had been considered desirable to obtain by law proper power for enabling the local bodies in various parts of the country to enter into agreements with the Government of India for the purpose of obtaining loans for carrying out such works. The Bill was intended to provide for this object.

REGULATIONS AND ACTS LOCAL EXTENT BILL.

The Hon'ble Mr. Cockerell introduced the Bill to consolidate and amend the law relating to the local extent of the general Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Bill purported to effect a complete consolidation of the existing law regarding the operation of the general Regulations and Acts, and the local limits of the jurisdictions of the highest Courts of Judicature and the Chief Revenue Authorities. That law at the present time was spread over upwards of fifty enactments. As from time to time it had been found necessary to extend the operation of the general Regulations to any fresh territory or to exclude from such operation some tract formerly subject thereto, the extension or exclusion had, in each case, been effected by special legislation. The result of this process was that the Statute-book had been greatly encumbered with enactments of this class, and the ascertainment of the fact of the legal application of a particular Regulation to any place involved the labour of a vast amount of research; whilst, in some cases—as for instance that of the Dehra Doon District, to which he made particular reference when asking leave to introduce this Bill—the ambiguity

engendered by repeated legislation in this direction regarding the same tract of country had caused the long-continued misapplication of the law by the judicial authorities. As regarded the territories subject to the control of the Lieutenant Governors of Bengal and the North-Western Provinces and the Madras Presidency, where the area within which the general Regulations were not in force was comparatively small and briefly definable, the object of the Bill was more conveniently and succinctly attained by a detailed specification of the portions of those territories to which the general Regulations did not apply. The first three schedules, consequently, were framed in accordance with this view. The circumstances of the Bombay Presidency, however, did not admit of the adoption of a similar course. In the case of the territories belonging to that Presidency, the application of the general Regulations had been of a very piece-meal character; in no district, apparently, had such application been universal. It had been confined to specified divisions of each district, and the detailed mention of these divisions, which formed the subject-matter of the fourth schedule, could not be avoided. It was to this clause alone that the Bill owed its somewhat cumbrous proportions. It might be objected, in reference to this circumstance, that the design of the Bill being to consolidate and condense the existing law, very little was gained where such lengthened recapitulations as were embraced in the fourth schedule were necessary. The answer to this was, that the scheme of the Bill being of general application, it would have been incomplete if its reference to any particular Presidency had been omitted; and although, on the score of brevity, the gain was far less than in the case of the other Presidencies, yet even in this respect some not inconsiderable advantage was secured by the proposed consolidation; for, as under the existing arrangement of the law there was a double reference to places to which the general Regulations were formerly extended, and which had been subsequently removed from their operation, the effect of the Bill would be to get rid of this double reference, and thus far at least to shorten the provisions of the law on this subject. It could with much reason be urged that a measure of this kind, so far as it related to the minor Presidencies, involving as it did purely local details, and consequently more fit to be dealt with by local experts, should be left to the Local Councils. That course would certainly, for many reasons, be more convenient, but there were legal difficulties in the way of its adoption which were insuperable. The first of these had already been alluded to by his hon'ble friend (Mr. Stephen), in reference to another Bill which had today been under consideration. It was that the Local Councils were not competent to vary or affect by their legislation the jurisdiction of the High Courts. Owing to the legal disability, from this cause, of the

Local Council, to legislate in a matter of this kind, it was found necessary, about two years ago, to pass in this Council an Act for removing certain places in the Bombay Presidency from the operation of the general Regulations. The other obstacle to local legislation in this direction was the want of power in the Local Council to set aside or alter any Act passed by the Imperial Legislature since 1861. The Act which he (MR. COCKERELL) had just referred to as passed by this Council in 1868, and which it was now proposed to repeal in this Bill, could not have been touched by the Local Council; hence the work of consolidation to be effected by this Bill, even if it could have been undertaken by the Local Council, must necessarily have remained incomplete. There were some other provisions of the Bill which, perhaps, called for explanation, as having apparently no connection with its general purport. He referred to sections 15, 16 and 17. The substance of these sections had been introduced into several Acts, from time to time enacted for the purpose of removing certain tracts of country from the operation of the general Regulations. For the purpose of consolidation, it was now proposed to repeal these several repetitions of the same subject-matter, substituting therefor the sections to which he had referred. The present measure was intended merely to affirm the results of past legislation in regard to the local limits of the general Regulations and the jurisdiction of the High Courts and Chief Revenue Authorities. He (MR. COCKERELL) was not prepared to say that the Bill now before the Council accurately fulfilled this intention. If it was referred to a Select Committee, the first step would be to consult the several Local Governments. The aid of local experience was essential to the correct adjustment of the details of the proposed enactment.

The Motion was put and agreed to.

GOVERNMENT RAILWAYS BILL.

Colonel the Hon'ble R. STRACHEY, in moving for leave to introduce a Bill to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government, said that it had been brought to the notice of the Government of India within the last few days, that the language of the Railway Act was such as to render it inapplicable to Railways belonging to, or worked by, the Government. There was no intention in this Bill to alter in any way the law relating to Railways: all that was proposed was so to modify the language of the Act as to make it applicable, in all cases, to Government Railways, precisely on the same principle as it now applied to Railways belonging to or worked by Companies. Under these circumstances he would give notice, now, that it was his intention at the next meeting to ask His Excellency

the President to suspend the Rules for the Conduct of Business, in order to admit of the Bill being then passed. At the present time he (COLONEL STRACHEY) might say that the Calcutta and South-Eastern Railway, leading to Port Canning, was practically, as he believed, under no law whatever, and it was evidently desirable that that condition of things should not be allowed to continue.

The Motion was put and agreed to.

INDIAN WEIGHTS AND MEASURES BILL.

Colonel the Hon'ble R. STRACHEY also presented the Report of the Select Committee on the Bill to regulate the Weights and Measures of British India.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to the local extent of the general Regulations and Acts, and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities——The Hon'ble Messrs. Stephen, Gordon Forbes and Chapman and the Mover.

The Council adjourned to Friday, the 1st April 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 25th March 1870.

Office Supdt. Govt. Printing,—No. 9242 L. C.—1-4-70.—300.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 1st April 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

LAND ACQUISITION BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill to consolidate and amend the law for the acquisition of land needed for works of public utility, be taken into consideration. He said that the Council would see from the Report of the Select Committee that numerous alterations had been made in the Bill as originally introduced; but those alterations might, with two exceptions, be considered to be of a minor character, not affecting the principle of the Bill as introduced. Two substantial changes in the Bill had been proposed by the Select Committee, and these required some notice from him; in only one of them, however, was there really any novelty. The alteration to which he would first refer was a matter which had long been before the Council. When the Bill was introduced about a year ago—or he ought rather to say immediately after its introduction—it was explained in a note circulated by the Legislative Department, and which had long been before the Council, that while the Bill laid down principles for the guidance of the persons officially employed in valuing land required to be taken up for public

purposes, there was nothing to preclude the Executive Government, if it so desired, from giving, by way of percentage or otherwise, something additional to the price fixed, in consideration of the compulsion to which the owner of the land was forced to submit when it was so taken up. Whether, if given at all, this additional sum ought to be given in all cases, whether the owner was really disinclined to part with the property or not, was a question regarding which there was much difference of opinion. The Bill as originally drawn did not attempt to deal with the question, and it was reserved for future consideration. When, in December last, the Bill was referred to a Select Committee, MR. STRACHEY stated that, in his opinion, it would be proper to allow something over and above the market-value of the land, in consideration of the compulsory character of the sale. The Committee had decided in favour of the same view; and he thought, for his own part, that this addition was one which it was quite right to make. This was one of the only two really important alterations which had been made in the Bill as originally introduced.

The other substantial change was one regarding which nothing had been said on the previous occasions when the Bill was before the Council. The matter was raised for the first time before the Select Committee. It was brought to the notice of the Committee that Act VI of 1857 did not really contain the whole law in regard to the acquisition of land for public purposes. Act XXII of 1863 enabled the Government to take up land for works of public utility proposed to be constructed by private persons or by Companies. The first part of that Act regarded the procedure under which the Government was to satisfy itself whether it was really right or not to take up the land, as if it were required for public purposes, for works of public utility proposed to be constructed; and the Act then went on to give power to the Government, in the event of the proposed work being constructed, to prescribe the conditions under which the work was to be allowed, and the measures which should be taken fully to protect the interests of the public and its convenience and security. It seemed to the Select Committee that there was no reason for keeping on the Statute-book a separate law in regard to this particular subject, and that the opportunity should be taken of consolidating the whole law on the subject of acquiring land for public purposes or for works of public utility. The Committee had therefore proposed to repeal Act XXII of 1863, and to re-enact, as part of the present measure, those portions of the Act which were really of importance: Act XXII of 1863 was rather a complicated measure, which had been hardly ever brought into practical effect. It contained, also, many conditions regarding the acquisition of land required for railway-construction by private

persons or Companies other than the guaranteed Companies by which the existing Railways had been made. There had been no case in which these particular provisions referring to Railways had been put in force, nor was there any present probability of their being required, because no such Railways were under construction, nor were any such, he believed, contemplated. It appeared to the Committee that, whatever provisions of this kind might be really required, they would more fittingly find a place in a Railway Act, than in an Act regarding the acquisition of land. It had long been admitted, as the Council were aware, that a review of the existing law regarding Railways was very necessary, and the subject was now under the consideration of Government. Meanwhile, pending the conclusions that the legislature might arrive at regarding the general law regarding Railways, there could be no doubt, he thought, that the repeal of that portion of Act XXII of 1863 referring to Railways could lead to no possible inconvenience, and every thing which that Act really contained of present value it was proposed to include in Part VII of the present Bill.

These were the only two real substantial changes that the Committee had proposed. There were many other alterations, however, as the Council would see from the Report of the Select Committee, and, although he had called them minor alterations, there could be no question that they very greatly improved the Bill. They had made it, MR. STRACHEY was satisfied, a much more complete measure than it was before, and they had rendered it much more likely to be successful. He thought that, if the Council consented to pass this Bill into law, there was every reason to hope that it would remove the gross abuses of which so much complaint had been made, and from which both the public and the State and private interests had frequently suffered.

The intention of the Government, when this measure was first brought forward, was to take the law of England, as interpreted by the English Courts, as the basis of our legislation. He had formerly stated this on the authority of Mr. Maine and of the learned Secretary to the Council, and he thought the Hon'ble Mr. Stephen would probably confirm his statement, if he said that the present measure did little more than endeavour to adopt, in a spirit liberal towards private interests, the principles recognized by the law of England and other civilized countries.

The Hon'ble MR. STEPHEN said that his Hon'ble friend had been good enough to refer to him for confirmation of the statement, that what the Bill supplied was a liberal interpretation and application of the law of England to

the circumstances of this country. It gave him great satisfaction to corroborate that assertion in the strongest manner. With reference, in particular, to the leading alteration to which his Hon'ble friend had referred, MR. STEPHEN would say a few words with the view of showing that we had adopted the law of England, and done so in a spirit of somewhat greater liberality towards the public than that which prevailed in England. According to the law of England, the compensation was assessed by a jury summoned by the Sheriff, and generally presided over by an assessor. No rules had been laid down to guide them in the exercise of their discretion, and the consequence was, that a branch of business had grown up in England, eminently profitable to lawyers, eminently profitable, in some instances, to those who received compensation, but in no way profitable, either to the undertaking for which the land was required, or to the general interest which the public had in a fair and equitable arrangement on such occasions. During the early history of this subject, those from whom lands were taken used to get enormous compensation. After that there was a considerable re-action, and cases of hardship sometimes occurred the other way. But at length, without any explicit legislative provision on the subject, but partly by practice, and partly by the decisions of the Courts of Justice, a sort of general rule was arrived at, more particularly in London, with regard to the amount of compensation to be awarded, and that general understanding was, that you were to pay the fair price which a prudent purchaser would accept for the property, plus an addition for the forced sale, which, by practice, was taken at ten per cent. Besides this, special compensation was made for severance, for expenses of removal, and any damage to trade that might result. The law in England thus rested practically on usage, and was subject to great variations : it rested also on a series of judicial decisions known to the public.

The Bill which was now submitted, and particularly that part of it to which his Hon'ble friend had referred, threw into the form of explicit propositions those general principles which had gradually come to be recognized in England; but it treated the persons subjected to these compulsory sales somewhat more liberally than was the practice of London juries of late years. It gave them the market-value, not the auction-price, but the market-value plus fifteen per cent. He must say, he thought that when this arrangement was made known to the public—when they understood how fully the owner's interests had been consulted by his Hon'ble friend and the Select Committee to which the Bill was referred—the only doubt that could possibly be entertained on the subject would be whether we had not gone rather too far in liberality towards the individual at the expense of the public. MR. STEPHEN could hardly imagine that the Bill in its present form could be regarded as a measure of

confiscation, or that it would work with any degree of hardship on persons whose property was taken in order to be used for public purposes.

The Hon'ble MR. COCKERELL said that, in concurring entirely, as he did, in the equity and propriety of the proposed enactment; entertaining also the opinion that, in its progress through Committee, the Bill had undergone most useful elaboration in detail and was now converted into a thoroughly workable measure, he should have thought it unnecessary to offer any remarks on the subject, but that he had seen it stated in a communication, emanating from a quarter from which this Council had, on several occasions, received very valuable opinions and suggestions, that, in proposing to pass this Bill to-day, we were proceeding with unusual and altogether unnecessary precipitancy Now, it appeared to him that such a statement was wholly inapplicable to the circumstances attending the passage of this Bill through the Council, and to show this, he need only point to the facts that the first step towards the proposed legislation was taken so far back as the time of His Excellency's predecessor; that what might still be termed the main provisions of the Bill were explained at great length and discussed on each of the three previous occasions on which the measure had formed the subject of debate in this Council, and that, in the intervals between the occasions referred to, the utmost possible publicity was given to the policy of the Government in this matter. The call for the expression of public opinion in regard to the measure might be said to have been fully responded to, and the Committee had thus had the advantage of going into the consideration of the Bill with very full information in regard to all its material provisions. As the result of their deliberations, the Committee had framed a report which shewed, as had been explained by his Hon'ble friend the mover, that the main features of the original Bill were considered fit for adoption with but slight modifications. Under these circumstances, it could not reasonably be affirmed that the proposal to take the report into immediate consideration, and thereafter to proceed to the passing of the Bill as amended, was otherwise than in accordance with the usual practice of the Council. With still less reason could it be maintained that this course was, as regarded the measure now before the Council, unnecessary; for the extent to which, under the present state of the law, the whole tax-paying community was defrauded for the benefit of the few owners whose property was needed for public purposes had been fully demonstrated, and it was certainly incumbent on the legislature to apply a remedy to so gross an evil with all practicable dispatch. It had been urged in the communication to which he had referred that, as the Bill had been greatly altered in Committee, the proposed amendments should be published and time given for the public to become acquainted

with their purport ere they were finally adopted by the Council. His Hon'ble friend the mover of the Bill had already explained that these amendments comprised only two changes of substance, and he would remark that, of these main alterations, the one to which Mr. Strachey gave the greatest prominence in his statement, namely, the proposal to give a bonus of fifteen per cent. in excess of such ordinary compensation as the owner of land required for a public purpose might be held entitled to receive, was not only sure to be viewed with general favour as a liberal measure, but would also be accepted as a not unexpected concession; for the substance of the proposal was distinctly set forth, in the statement made by the mover of the Bill immediately before it was referred to a Select Committee, as worthy of consideration, and, if approved by the Committee, likely to be assented to by the Government.

The other proposed change, which had been described as of special importance, *i.e.*, the application of the provisions of the Bill to the case of land needed by Companies undertaking works of public utility, amounted in fact to no more than the consolidation and simplification of the existing law on this subject. The amended Bill contained a large number of other changes, but they were exclusively alterations of detail, and were in no way repugnant to the principles which guided its original construction. Their operation was calculated to improve and simplify the procedure in acquiring land for public purposes; where they affected the interests of the owner of land, they would be found to place him in a better position than he was under the original Bill: it was not likely, therefore, that the proposed amendments would be objected to, and consequently no useful purpose would be served by further delay. There was one, as he thought, very important provision in section 3, to which he wished to draw attention. He referred to the fourth clause, which, purporting to declare the meaning of the expression 'Court,' as used throughout the Bill, in effect provided for the constitution of the tribunal by which all claims to compensation for property acquired under the operation of the law which could not be settled between the Collector and the 'persons interested' were to be adjudicated. This question underwent most careful consideration, and the Committee determined that, ordinarily, such cases ought to be tried by the chief local Civil Court. The alternative provision was intended to be applied only in special cases, the circumstances of which might be such as to make it clearly for the interest and convenience of all parties that some special agency should be employed for the adjudication of those cases. It was hoped that local Governments would very sparingly exercise the special power vested in them by this clause. The intention of the Bill was that cases coming under it, in which the Collector and the owners of the property to be acquired could not settle the terms of

purchase, the question should be referred to the most competent, and at the same time most independent, judicial agency to be found in the locality where the acquisition was to be made.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL stated that, with the concurrence of his Hon'ble friend the mover of the Bill, he would now ask leave to move for the insertion of the following new section immediately after the present section 56. The new section to bear the number 57, and the numbers of the subsequent sections to be altered accordingly.

"No award made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award shall be liable to pay any fee for a copy of the same."

This amendment was designed to repair an oversight in the settlement of the clauses in Committee, and was absolutely needed to give full effect to the policy of the Bill as regarded the relief of the owner who was compelled, for the sake of public convenience, to part with his property, from all loss and annoyance of any kind, arising out of such compulsory surrender, that could be avoided. It would be clearly unreasonable to subject to any tax for revenue-purposes, transactions forced upon the owners of property in which they were not, by the necessity of the case, free agents. The recognition of this principle dictated the exemption of applications for payment of compensation in the recently enacted Court Fees Act; and the framers of this Bill had been careful to relieve persons interested in property acquired for public purposes of all costs of proceeding, taken for the purpose of such acquisition, except in cases where such costs had been clearly entailed by the wrong-doing of such persons.

Colonel the Hon'ble R. STRACHEY said that the awards which the Hon'ble Mr. Cockerell proposed to exempt from stamp-duty would only include awards made by the Collector under section 14 and those by the Court under section 34; but under Part VI of the Bill, relating to the temporary occupation of land, analogous proceedings took place between the Collector and the person interested. COLONEL STRACHEY desired to point out that there were orders of Court, under section 45, in the case of a difference arising when the land was temporarily occupied. Also, there were agreements come to under section 43. Therefore he thought his Hon'ble friend would not object to treating agreements under section 43 and orders under section 45 in the same way as awards made under the two other sections.

The Hon'ble MR. STEPHEN remarked that there was nothing in the law to render such orders liable to stamp-duty Nothing, therefore, need be said about them in Mr. Cockerell's amendment.

His Excellency the COMMANDER-IN-CHIEF said that he had listened to what had fallen from Mr. Cockerell and Colonel Strachey, but he had as yet not heard any reason given why this exemption should be made. It appeared to HIS EXCELLENCY to be worthy of consideration whether this particular class of business did show any special features which called on the Council to make a distinction in the application of the provisions of the Stamp Law.

The Hon'ble MR. STEPHEN said that in this instance, the action of the Government in taking land caused the persons interested to give up their lands for public purposes; and then to get an award made, or else to make an agreement, and it would be rather hard if they were compelled not only to give up their lands for public purposes, but also to pay a tax on the instruments by which they would get compensation. That, he thought, was the ground on which the distinction was made.

The Hon'ble MR. COCKERELL said he had already explained that the amendment was in accordance with, and in pursuance of, the policy of the Bill. In his opinion that policy would be incompletely carried out if the amendment were not adopted. The case was one which, for obvious reasons, excluded general considerations of the interests of the revenue The effect of subjecting to a tax any of the proceedings forced upon the owners of property by the conditions of this Bill was to reduce, *pro tanto*, the amount of the compensation to which they were held to be entitled.

His Excellency the Commander-in-Chief said that it should be observed in the interests of the finances that the Bill was of a peculiarly liberal character towards the person proposed to be ousted from the property which was to be taken for a public purpose. We had only to turn to the forty-second section, and it would be seen that, in consideration of the compulsory nature of the sales, fifteen per cent. was to be added to what was considered the real value of the estate. When we were about to give such large advantages to those who were to part with their property, in the interests of the public, for public purposes, no reason, HIS EXCELLENCY thought, had been made out why these parties should be exempted from the small dues of the revenue by which their interests were affected. All exemptions from the operation of financial laws were greatly to be deprecated.

The Hon'ble SIR RICHARD TEMPLE concurred with His Excellency the Commander-in-Chief.

The Hon'ble MR. STRACHEY said that it appeared to him that no question was involved in the motion before the Council which could affect the imperial revenues at all. He did not suppose that the revenue realized from these fees could possibly amount in the course of a year to £ 5; at the same time it seemed quite clear that justice required that if we took a man's property for public purpose, against his will, he ought to be in every possible way protected against unnecessary loss and inconveniences of every kind, and MR. STRACHEY thought that it was clear that the owner ought to be exempted from liability to payment of stamp duties in consequence of transactions forced on him by the Government, and although as he had said, the loss of these duties was a matter of absolutely no importance to the Government, it was quite possible that their payment might be a matter of very considerable importance to the extremely poor people, whose land would not unfrequently be taken up. Consequently he entirely concurred in the propriety of the amendment proposed.

The Hon'ble MR. COCKERELL then moved, by way of amendment, that the following section be substituted for that which he had at first proposed :—

57. "No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same".

The motion was then put, and the Council divided :—

AYES.	NOES.
His Excellency the President.	His Excellency the Commander-in-Chief.
Major General the Hon'ble Sir H. Durand.	Hon'ble Sir R. Temple.
Hon'ble Mr. Strachey.	
Hon'ble Mr. Stephen.	
Hon'ble Mr. Gordon Forbes.	
Hon'ble Mr. Cowie.	
Colonel the Hon'ble R. Strachey.	
Hon'ble Mr. Chapman.	
Hon'ble Mr. Bullen Smith.	
Hon'ble Mr. Cockerell.	

So the amendment was carried.

The Hon'ble MR. STRACHEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PAPER CURRENCY BILL.

The Hon'ble SIR RICHARD TEMPLE applied to His Excellency the President to suspend the Rules for the Conduct of Business, to enable him to introduce the Bill for the further amendment of Act No. XIX of 1861.

He said—" In making this application, I have little to add to what I stated at the last meeting of the Council (on the 25th March) when I moved for leave to introduce the Bill. I then shewed by statistics (the result of which will be in the recollection of the Council) how the progress of our Paper Currency justifies us in asking for power gradually to raise the limit of that portion of the reserve which is invested in Government Securities, from four crores or millions sterling to six crores or millions of rupees. In addition to those statistics there is one set of figures which, I think, would now interest the Council, and which I will present, in reference to remarks which have been made in some public quarters. It seems to be believed by some that the mass of our notes is held in the Presidency towns, and by a few parties or corporations like Banks, and that the circulation in the interior of the country is comparatively small.

" Now how stands the circulation in the interior, and how is it to be measured? I will take the figures of the circulation for the month just expired (March). It then stood at Rs. 10,27,50,640, or 10⅓ crores or millions, of which 9 crores or millions pertained to the Presidency towns, leaving 1⅓ crores or milions for the circles in the interior. This sum was divided as follows among the circles of the interior; Allahabad £355,000, Lahore £244,000, Calicut £77,000, Trichinopoly £43,000, Vizagapatam £33,000, Nagpore £274,000, Kurrachee £233,000, Akola £87,000.

" Or, again, let us take the month of January last, when the circulation stood at its highest, namely, Rs. 11,48,06,470 or just 11½ crores of rupees or millions sterling. Of that, 10 crores or millions pertained to the Presidency towns, leaving 1½ crores or millions for the circles of the interior. This sum was divided among the interior circles as follows:—Allahabad £362,000, Lahore £274,000, Calicut £66,000, Trichinopoly £57,000, Vizagapatam £34,000, Nagpore 7 000, Kurrachee £266,000, Akola 196,000.

"Now, this circulation in the interior is considerable and increasing, though still very much below what we hope it will be some day. And it is the product of the Government system of Paper Currency within the last few years. Though the greatest part of the circulation is in the Presidency towns—which is only what might be expected, inasmuch as they are the great centres of trade—still, the circulation in the interior of the country is growing fast.

"Further, I have heard it remarked in some quarters that, in England, when there is a demand for money, then money is taken quite as much in notes as in coin, and that, at such times, the note-circulation often increases. Now, if I understand the argument rightly, it is assumed that, in India, the process will be virtually different; that is to say, when there is a demand for money, the money will be taken, not in notes, but in coin; or, in other words, when the money-market is in tightness or distress, there will be a rush, not for paper-money, but for cash; or, again, that the Banks, which generally hold large quantities of notes, would present their notes for encashment. Now, I cannot find that there is any reason for supposing that, in the above respects, the commercial centres of India are different from those in England or elsewhere. I have compared the rise and fall of the accommodation rates of the Bank of Bengal with the fluctuations of the note-circulation from 1865-66 to the present time, and I fail to find that when those rates have been high the note circulation has been low. For instance, in April and May of 1865, the Bank's rates were thirteen and eleven per cent. for private bills; the note-circulation in the Calcutta Circle stood at £2,909,000. In April, May, June and July 1866, the Bank's rates were sixteen, fifteen, fourteen, and twelve, per cent.; the Calcutta circulation stood at £2,600,000, £2,713,000, £2,817,000 and £2,924,000. At both these troublous periods the note-circulation was well sustained, for the average circulation of 1865 stood at £3,033,000 and of 1866 stood at £2,799,000. In short, looking at the figures month by month for the last four years, I cannot perceive that the fluctuations of the note-circulation are materially, if at all, affected by the tightness or easiness of the money-market, as evidenced by the accommodation-rates of the Presidency Banks. Indeed, the absence of any relation between the two sets of phenomena may be accounted for by the steady progress of the Paper Currency.

"I regret to see that in some quarters it seems to be supposed that, if the power of investing up to six crores or millions is conceded to us, it will be exercised at once and not gradually. I trust that it will suffice to remind this Council of the assurance which I gave at the last meeting, on behalf of that Department of the Government of India which I represent, to the effect that it is our intention to exercise the power, if it be voted us, in a tentative and

cautious manner. If the Council will bear in mind the statistics I presented at the last meeting, of the very gradual manner in which the investments were brought up to the present limit of four crores or millions, it will be apparent that in the past our practice has been cautious; and that is the best guarantee that the intention I now declare of continuing in the same cautious course will be fulfilled.

"I may conclude by observing that the measure I now propose has the support and approval of our distinguished colleague His Excellency Sir W. Mansfield, who, as the Council knows, has for many years paid special attention to currency-questions, and was President of the Commission which sat four years ago and reported on the whole subject of the Paper Currency of India."

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then introduced the Bill and moved that it be referred to a Select Committee with instructions to report in a week.

The Hon'ble MR. COWIE said that, as this measure had called forth a certain amount of adverse criticism, he wished to record his opinion that he thought it a correct and advantageous system, and one which the Government could not have postponed much longer. He had formed this opinion on the assumption that the approach to the new maximum of six millions would be as carefully made and would be as guardedly approached as was done some years ago to the present maximum of four millions.

His Excellency the COMMANDER-IN-CHIEF said that, having been appealed to by his hon'ble friend for his opinion, he begged to say that the Bill had his entire support. He thought it not impossible that the uncertainty created in the public mind by the proposal of his hon'ble friend had arisen from the terms in which the Secretary of State for India announced his views in 1860 with regard to the manner in which the Paper Currency should be organised in this country. If the Council referred to the Despatch of the Secretary of State quoted at the last meeting, they would find that he made use of these words:—

"The sound principle for regulating the issue of a paper-circulation is that which was enforced on the Bank of England by the Act of 1844, *i. e.*, that the amount of notes issued on Government securities should be maintained at a fixed sum, within the limit of the smallest amount which experience has proved to be necessary for the monetary transactions of the country; and that any further amount of notes should be issued on coin or bullion, and should vary with the amount of the reserve of specie in bank, according to the wants and demands of the public."

Perhaps it would appear strange to the Council that that which was announced by Sir Charles Wood to be a sound principle, was condemned by many great banking authorities in England. There was perhaps no question with regard to the Paper Currency which had excited so much adverse criticism at the remark that it was prudent to issue paper as against securities. It was laid down with an authority which His Excellency believed it to be impossible to controvert, that if you committed yourself to this principle in its integrity, you embarked in the channel which, in the days of Law under the Regent Orleans, in France, and again in the South-Sea time in England, and with regard to the convulsions which fell on the commercial world four years ago, led to wholesale ruin; that if you adopted this principle and accepted it in its integrity, you were liable to consequences, from which sooner or later escape was impossible, such as those to which he had adverted as the most serious instances presented by financial history. Perhaps it might seem that His Excellency was splitting words, because it was clear that Sir Charles Wood wished to guard himself, and believed himself to be guarded, from any such dangerous consequences by the precautions he described. Yet there was always a danger in describing a system to exist on a basis the soundness of which was open to question, and which was questioned by scientific authorities, one result being, as it appeared to him (Sir William Mansfield) in this instance, that a wrong impression had been produced in the minds of the public with regard to the very innocent measure under consideration. The principle, as he understood the various works which he had consulted on this point—the fair principle—on which a Paper Currency should be founded, was that it should have a solid basis; that it should be issued on a metallic foundation alone, partly bullion and partly specie. That, he thought, was the principle generally admitted, and which alone could be admitted as sound. Having laid down a solid basis and issued paper against bullion and specie, it was then for the Member in charge of the finances to determine how much of this currency we could afford to face, with regard to the absolute convertibility of the note, without the corresponding portion of bullion and specie in hand; that, as was said by McLeod in his valuable work on Banking, was a matter of experience. His Excellency would read to the Council a short passage in which that proposition was maintained:—

"As all Paper Currency is a 'promise to pay' gold or silver bullion at some definite time, it is quite evident that the 'promises to pay' floating in a nation must bear some proportion in quantity to the actual quantity of the bullion. It is quite impossible to fix any definite proportion, because that depends upon a multitude of peculiar circumstances; experience is the only guide on the subject."

Well, then, as His Excellency had attempted to explain, the currency of the country was founded on the principle of the notes being issued against bullion and specie. Then, at a certain point, the Hon'ble Member who was in charge of the finances declared that it was safe to invest a certain quantity of bullion and specie in hand, because it could not in any possible manner be called upon to assist in the convertibility of the note. His Excellency drew particular attention to that point, because he considered that, if from the nature of things it were possible that the whole of the notes in circulation could return to the vaults of the Currency Department, it would be absolutely unsafe to invest even the smallest portion with regard to the principle stated in the paper from which he had quoted. Then it appeared to His Excellency, according to the best investigation he had been enabled to give to the subject, that such a currency-system as that introduced by the late Mr. Wilson, and which had now been in progress for eight or nine years in India, was founded on a thoroughly sound and solid basis; and it was within the province of the Hon'ble Member in charge of the finances to tell the Governor General in Council when he considered that the proper point had been reached, demanding further investment of bullion and specie. In support of that, His Excellency would venture to read a definition he had prepared for his own guidance.

"The currency-reserve, whether as held in the Bank of England, or in the Indian Currency Department, is, in point of fact, a kind of trust-investment made under certain legislative enactments, for the purpose of giving the utmost assurance to the respective Governments and the public for the redemption of the Paper Currency, without causing that loss to the treasury and to the public which would ensue on the retention of many millions of specie in Bank or Currency Department cellars, which cannot from the nature of things be possibly wanted."

The figures placed before the Council by his Hon'ble friend showed a most remarkable development of the Note-circulation. Of those who had first listened to Mr. Wilson's proposition ten years ago and who had been called on to investigate its development since, there was hardly an authority who would not say that this development of the currency in this safe and solid manner had surpassed our anticipations. Well, having reached this point, we might ask, has not the time arrived when, as the Hon'ble Mr. Cowie stated it, the four millions of investment should not be gradually extended to six millions? His Excellency had no doubt that that time had now arrived.

It was said, in some circles, that this question was first raised with regard to certain projects which Sir Richard Temple would state to-morrow with

reference to his Budget; but His Excellency could affirm that this question first received the attention of the Government of India many months ago, when his Hon'ble friend was in England; the matter was discussed, and we had made up our minds that there could be no harm in the matter. On his return, Sir Richard Temple found the Council Notes, and having turned his attention to the subject and agreed in the conclusions arrived at during his absence, the result was the measure before the Council. This Bill had nothing in any way to do with the Budget projects which would be announced to-morrow.

His Excellency had nothing to add, except that, as far as he had been able to judge, he believed that there was no currency-system in the whole world which was at present on a more solid and scientific basis than the Paper Currency of this country.

The Motion was put and agreed to.

OBSOLETE ENACTMENTS BILL.

The Hon'ble Mr. Stephen presented the Report of the Select Committee on the Bill for the repeal of certain obsolete enactments.

HINDU WILLS BILL.

The Hon'ble Mr. Stephen also presented the Report of the Select Committee on the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns.

INDIAN WEIGHTS AND MEASURES BILL.

Colonel the Hon'ble R. Strachey moved that the Report of the Select Committee on the Bill to regulate the Weights and Measures of British India be taken into consideration.

The Hon'ble Mr. Forbes said that he had opposed the Bill before the Council, as the Hon'ble Mover was aware, on various points during its progress, and he wished, before the Bill became law, to say a few parting words of disapprobation regarding some of its provisions. He was aware of the labour and ability which his Hon'ble friend had devoted to the construction of this Bill; but, looking to the result which he had produced, it seemed to him (Mr. Forbes) that the Hon'ble Mover had to some extent enacted the part of Frankenstein, and produced, not a monster perhaps, but a very unsymmetrical creation. The Bill was neither the fulfilment of the views expressed by Government in their despatch, dated November 1868, to the Right Hon'ble the Secretary of State, and approved by him, nor was it the metrical system in its

proper form. Here was indeed the body, or rather the members of the metrical system, but joined together after a fashion devised by the Hon'ble Member. He (MR. FORBES) knew that the reason which his friend alleged for this course was, that he believed the measure in this shape would encounter less opposition than would be offered to the metrical system. He (MR. FORBES) could not see this. He thought that it was a mistake, and that the Indian public would prefer the metrical system to the creation of the Hon'ble Member. For his own part he (MR. FORBES) believed that the wisest and best course would be to pass a measure which should introduce standards of weight and capacity only; a less ambitious measure certainly, but one better suited to this country. In order that he might justify the terms by which he had characterized the Bill, he begged the attention of the Council to the latter part of section 5, which provided that, unless it should be otherwise authoritatively notified, sub-divisions of weights and measures should be expressed in decimal parts. If the Hon'ble Mover had introduced the metrical system in its proper form, decimal numeration would have followed as a matter of course; and would have been intelligible to the simplest mind; but it seemed to him that his Hon'ble friend had done too much and dared too little, and in this Bill decimal numeration simply appeared as an arbitrary condition. He (MR. FORBES) was quite sure that the addition of this condition would prove a great obstruction to the cordial acceptance of the Bill by the people of India, and that they would shrink from what would otherwise be regarded as a boon and a benefit. Every one who was acquainted with India knew that the Hindú system followed the currency, and used the factors and multiples of sixteen. He thought that most of the members of this Council must have observed the operations of a shroff counting a heap of rupees; he drew the coin to him by fours and numerated accordingly. Many of the members must also be aware that a cultivator, in describing a crop, spoke of it as a twelve-anna crop, meaning that it was a three-quarter crop, or a fourteen-anna crop, and so on, as the case might be. This system was familiar to Hindús of all ages; it was simple and led to no confusion. He was persuaded that to attempt to substitute the decimal numeration for it would be to encounter as great a difficulty as the removal of any caste or religious custom. He thought that the Council ought to reject the concluding part of section 5, and, if he met with any encouragement to do so, he was prepared to move its rejection from the Bill.

Colonel the Hon'ble R. STRACHEY said that he had intended to have explained the form into which the Bill had been finally thrown by the Select Committee before the Hon'ble Mr. Forbes made the remarks which had just fallen from

him, and he would now offer a few remarks on this subject. As to the change which had been referred to in the scope of the proposed legislation, all that had to be said was that in fact the present Bill did nothing more than what the Government of India recommended to the Secretary of State, and what the Secretary of State agreed should be done. What the Government of India proposed was that, as regards any general change of weights and measures in British India, nothing should at present be carried out excepting a change in the weights; and that the change in weights should be made very gradually and with very great care. There was no specific allusion made in the despatch of the Government of India to the Secretary of State to measures, but it was understood at the time when that despatch was written that the time had not come for dealing with the question of measures at all. Before the Bill now before the Council was prepared, and during the interval between the writing of that despatch and the preparation of the Bill, it had been brought to the notice of the Government that for the purposes of some of the departments of Government, it might befound to be expedient—he might almost say necessary—that the metre should be adopted as the unit of length simultaneously with the adoption of the new ser, which it was determined should be equal to the Kilogramme as the unit of weight. Consequently, in framing the Bill, it was thought right that a distinct reference should be made to the metre, and that it should be defined in the same general way that the new unit of weight was defined. There would be a manifest inconvenience if the Government adopted in any of its departments, or required the Railway Companies to adopt, any measure which could not be legally substantiated in India. The only way in which legal form could be given to any measure which the Government proposed to adopt, was to declare by law what should be the standard by which such measures were to be tested. Provisions were made in the Bill for testing and verifying weights. It was evident that, if the machinery which the Government proposed to create for the purpose of testing and verifying weights could not be applied to the testing and verifying of measures, the community at large, in its dealings with the Government or in its dealings with the Railway Companies, would not have that amount of protection afforded to them which they had a right to demand from the Government. Under these circumstances, it was thought proper to define in the Bill what should be the metre. The application of the metre however merely extended to the transactions of the Government Departments, Municipal Bodies and Railway Companies. As he had explained on a former occasion, the Government practically had the power, in respect to such Departments, Bodies and

Companies, in its executive capacity, to order the adoption of any of the measures referred to in the Bill without having recourse to legislation. But, for the reasons he then explained, and which he had now again repeated, it was considered better, when the Bill was put before the Council, to include in it a reference to the metre. He might add that these views had been agreed to by a large majority of the Select Committee.

As regards the form given to the Bill and the manner in which the metrical units had been dealt with, the Hon'ble Mr. Forbes was, he thought, somewhat under a misapprehension. As COLONEL STRACHEY had endeavoured to explain before, the idea of establishing any theoretical units of weight or length had been entirely given up by scientific men, and the only basis on which any system of weights and measures could be safely framed was now universally admitted to be the basis of material standards. On that basis it was proposed to construct the system of weights and measures to be adopted in British India. There was no reference to any theoretical connection between the unit of length and the unit of weight; there was no necessity for any such reference, and in fact any such reference that could be made must be incorrect. Consequently, in the Bill as it now stood, the units of weight and length were defined, in the one case as a weight of metal in the possession of the Government of India, and in the other case as the distance between the marks at the end of a rod of metal in the possession of the Government of India.

In connection with these remarks, he might add that the Committee unanimously adopted the conclusion that any reference to English weights and measures in the definition of the units was objectionable. It was brought to the notice of the Committee that the figures originally inserted in the Bill were questioned. Those figures, he should say, were inserted in opposition to his own views of what was proper, and on its being explained to the Committee that no figures could give a precise or certain equivalent, in English weights or measures, of the new weights and measures, the Committee unanimously agreed that it was proper to omit all reference to English weights and measures and to define the new units as had now been done in the Bill, that was, by reference to certain precise material objects, the Kilogramme des Archives, and the Mètre des Archives which they were to represent.

An addition had been made to the portion of the Bill which referred to the compulsory introduction of the new system. It was brought to the notice of the Committee that, in many parts of India, particularly in the South, the

ordinary transactions of the people in grain were carried on with measures of capacity and not with weights. It was true that these measures of capacity represented certain weights of grain. The introduction of measures of capacity, which, under the new system, were also based on the unit of weight, did not in fact introduce any reference whatever to the new standard of length. The unit of measure of capacity was defined to be a measure containing a ser of water. Therefore, although there was an apparent departure from the original intention of confining compulsory action to weights alone, measures of capacity were in fact representatives of weight, and therefore there was no divergence on that point from the original intention.

An important addition had been made to the Bill by the proviso which had been added to section 22, which declared that the possession of any weight or measure in accordance with the standards of weights and measures established throughout the United Kingdom of Great Britain and Ireland would not subject the possessor to any penalty. This was an addition obviously very proper, as transactions between India and England would, to a very great extent, be carried on with the weights and measures of England.

Although it would perhaps have been more proper if he had reserved his reply to the particular remarks the Hon'ble Mr. Forbes had made on some of the details of the Bill to a later stage of their proceedings, he might save the time of the Council if he now made one or two observations in reply to those remarks. Mr. Forbes had particularly referred to the last clause of section 5, which said that, unless it be otherwise ordered, the sub-divisions of all weights and measures should be expressed in decimal parts. The manifest scope and intention of section 5 was to give power to the Executive Government to declare what new weights should be adopted, but subject to the proviso that they were to be exact multiples or sub-multiples of the units. This had been done advisedly and altogether in opposition to the views of the extreme partizans of the metrical system. Such persons affirmed that the only proper way to proceed was to introduce the decimal system once for all in its integrity, however troublesome such a radical change might be, and they deprecated any gradual change. COLONEL STRACHEY personally did not entertain those views, and the Committee, he saw, had adopted the view found in section 5, that it should be left to the Executive Government to prescribe the precise form of the new system of weights and measures that should be adopted, in addition to the new units. The provision that had been introduced empowering the Government not to make decimal multiples compulsory, unless they were fully convinced that such divisions should be made, so far from suggesting that the divisions

should necessarily be decimal, would obviously be quite in the opposite direction. There was no doubt, as his hon'ble friend Mr. Gordon Forbes had remarked, that there would be great difficulty in carrying out any decimal system of weights and measures, or any change of the units such as was contemplated by the Bill. There was no question that the difficulty in India, of carrying out these changes effectually, would be greater than in any country in which education was further advanced. If it was really desirable to introduce, early, a good system of weights and measures into the country, the sooner we began it the sooner would it really take effect. That the change was difficult was no reason why we should shirk it. If the ignorance of the people was to be received as a reason for not adopting improvements, he thought India would be in a very bad way indeed. It would be for the Government to see that all changes of the sort contemplated in respect to the weights of the country were carried out with great caution, and that nothing should be done to force any change on the people until they had been gradually prepared for that change by the adoption of the new system in the Government Departments. The transactions of the Government Departments and the Railway Companies were on so large a scale, that the community at large would, in a measure, be forced to adopt whatever the Government and those large Carrying Companies adopted; and there was no reason to doubt that the people in the districts and towns in the vicinity of the larger Government establishments and of the lines of railway would soon become habituated to the use of the new weights, and that it would then become possible and reasonable to extend their use to such localities.

Major General the Hon'ble SIR HENRY DURAND said that there was a point in connection with this Bill which he did not see touched upon, but which was, incidentally, rather important. He wished to be informed whether, as the statement mentioned that Government offices were to adopt the new system of measures, it was intended that the unit of measure should extend to the great geodesical operations carried on in the country on the basis of English measures, involving a long series of most scientific observations and labours carried on for a long series of years. There were volumes based on those calculations. Was it intended that the whole of those labours was to be of no effect, and that we should remodel the whole triangulation of the country, all the maps based on it, and the whole of the revenue-surveys in connection with those labours? If that were so, it would be a very serious proposition indeed.

Colonel the Hon'ble R. STRACHEY said, in reply to the Hon'ble Sir Henry Durand, that section 9 merely declared that, whenever the Governor General in Council considered that proper standard-weights and measures of the new system had been made available, he might direct that any of such weights and measures should be used by Government Offices, Municipal Bodies and Railway Companies. All that he could say in reply to the question put by the Hon'ble Member, as to the probable effect of the passing of this Bill on the operations of the Survey Department, was that he was not aware that there had been under consideration till the present time any proposal to make any alterations in the operations of any Public Department in connexion with the proposed change of weights and measures. The question had been incidentally raised in the Public Works Department, whether, for some branches of that Department, the adoption of the metre simultaneously with the kilogramme might not be desirable, but the question had not taken a definite form, and no decision to do anything had as yet been come to. He presumed that, if the Executive Government considered that it was proper to alter the scale on which the public maps were constructed, it would be optional with it to do so. The departmental officers of the Government would necessarily be asked to advise the Governor General in Council on the subject, and the Government, after full consideration it may be presumed, would come to a decision as to any change that might be suggested.. There was, however, nothing in the Bill which implied that any such change as had been referred to was contemplated ; all that it said was that, when the Government considered it proper to make a change in the unit of length, it should be made in a certain way. Obviously, the executive Government could do this whether the Bill became law or not, and he could not see how it could be supposed that the Government could be in any way forced to make changes merely because this Bill contained a declaration of the indisputable fact that they could on their own authority order their own offices to make changes.

Major General the Hon'ble SIR HENRY DURAND said, he was aware that the Bill was permissive and left much to the discretion of the Government, but the reply was not satisfactory ; for the Bill and statement intimated a clear intention as to the early introduction, through the Government offices, of the new system of measures, and it was a very material question whether the whole of those scientific operations, on which all the surveys and maps of the country were based, should stand fast or not, whether, in fact, the Great Trigonometrical Survey was to continue to work with the old English measures hitherto employed, or with the new.

The Motion was put and agreed to.

Colonel the Hon'ble R. STRACHEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS' BILL.

The Hon'ble MR. CHAPMAN moved that the Report of the Select Committee on the Bill to make further provision for the regulation of Native Passenger Ships be taken into consideration. He said that he had to request the special attention of the Council to sections twenty-four, twenty-five and twenty-six. These sections constituted the back-bone of the Bill. By the first of them all ships sailing from any port in British India to any port in the Red Sea were bound to touch at Aden and there obtain a clean bill of health, and the owners, or masters, were liable to a civil penalty of rupees five thousand if they omitted to do so. By section twenty-five, all ships sailing from any port east of the Cape of Good Hope and commanded by persons to whom the Bill applied were liable to a criminal penalty of two thousand rupees if they did not touch at Aden and obtain a clean bill of health. The reason of the difference between the two penalties was this. In the case of ships clearing from British ports, the officers of the Government would be able to insist on the owner or commander entering into a civil bond before allowing the ship to clear out; whereas, of course, in the case of vessels sailing from foreign ports, there would be no opportunity of doing so. The only way in which the criminal penalty could be enforced in the latter case would be by information on the part of some one of the crew or passengers on the arrival of the ship at a British port, or by an inspection of her papers.

Section 26 provided that the bill of health which ships were bound to obtain would be withheld in all instances where there were more than the authorized number of passengers. When MR. CHAPMAN took charge of this measure, it became his duty to devise the most effectual means he could think of to prevent the fearful amount of overcrowding which there was reason to believe prevailed on board these pilgrim ships. Looking to the geographical position of Aden, it at once occurred to him that the best plan would be to overhaul them there. It would be impossible, considering the number of foreign ports in the Straits and elsewhere, to arrange, in concert with the several Governments of these ports, for the examination of ships before departure. He admitted that the provisions of the present Bill were very stringent, and were likely to occasion considerable inconvenience and expense. All he could say was, that he should be happy to make less objectionable provisions

if he thought they would secure the desired ends. The practical result of the measure would be that pilgrims would have to pay more for their passage than they now did. He had received a petition signed by some members of the Muhammadan community, in which, while approving generally of the measure, they suggested that, in cases where the wind was favourable and there was ample time to reach Jeddah at the proper season for making the pilgrimage, the ship should be obliged to touch at Aden; but if not, she should be permitted to proceed direct to Jeddah, and there the passengers should, previous to landing, be subjected to an examination by the Consul. He need hardly remark that, in point of practice, it would be impossible to give effect to this suggestion. In his opinion, if the Government were to legislate at all on these matters, it was advisable to do so in a complete and effectual manner.

The Hon'ble MR. COCKERELL said that as a member of the Select Committee on this Bill, he wished to state that the Committee had not lightly, or without a full sense of their rigour, adopted the very stringent provisions contained in sections 24 and 25. Indeed he might say that his Hon'ble friend's proposals in this direction were very reluctantly assented to. It was felt, however, as had been stated by his Hon'ble friend, that the very objects of the present legislation, which had been undertaken in the paramount interests of the cause of humanity, could not be effectually attained in any other manner. The obvious objection to these provisions was, that they imposed a similar obligation and burden on all masters or owners of Native passenger ships, including those who might have never carried more than a fair complement of passengers, with those who, for personal gain, had disregarded the dictates of humanity and rendered necessary such strong preventive measures as were provided by the Bill. As regards the expense entailed by the proposed provisions, it was within the power of the Executive to mitigate the burden to a considerable extent. He understood that, quite recently, vessels touching at Aden for the sole purpose of using the telegraph had been exempted from the payment of port-dues.

It was only reasonable, under the circumstances in which Native passenger ships were compelled to enter that port, that a similar exemption should be applied to them, and he had no doubt but that this would be done.

The Motion was put and agreed to.

The Hon'ble Mr. Chapman then moved the following amendment. That in section 24, line 12, after the word "Aden," the words "on her outward and also on her homeward voyage" be inserted.

These words were omitted by an oversight. The effect of them would be to subject the ship to examination both on going to, and returning from, the Red Sea. The practice of overcrowding prevailed on both occasions.

The Hon'ble MR. CHAPMAN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

GOVERNMENT RAILWAYS' BILL.

Colonel the Hon'ble R. STRACHEY introduced the Bill to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government. He said that the object of the Bill was perfectly explained in the title. As he had stated when he asked for leave to introduce the Bill, it had been observed that the language of Act XVIII of 1854 was such as to make that Act inapplicable to railways belonging to the Government, and it was necessary to correct this.

Colonel the Hon'ble R. STRACHEY having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

Colonel the Hon'ble R. STRACHEY then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

Colonel the Hon'ble R. STRACHEY also moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to amend Act No. XIX of 1861 *(to provide for a Government Paper Currency)*—The Hon'ble Messrs. Stephen, Gordon Forbes, Cowie, Chapman, Bullen Smith and Cockerell and the Mover.

The Council adjourned to Saturday, the 2nd April 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 1st April 1870.

Office Supdt. Govt. Printing.—No. 9486 L. C.—7-4-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 21 & 25 *Vic., cap.* 67.

The Council met at Government House on Saturday, the 2nd April 1870.

PRESENT :

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I. *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitjames Stephen, Q. C.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

FINANCIAL STATEMENT.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE, in moving for leave to introduce a Bill for imposing duties on Income and Profits, said—MY LORD, " I have now to present the Budget for British India for the official year 1870-71, this being the eleventh annual statement presented to the Legislative Council During my absence from India for six months of the year 1869-70, the finances were administered by my hon'ble colleague Mr. John Strachey, and some of the measures which I shall hereafter have to mention were commenced or carried on by him. The ability and carefulness with which he conducted the administration are too well known to your Lordship and to the Council to require any further commendation from me.

On this, as on former occasions, my statement will be divided into three parts, namely, the actual account for the past year 1868-69; the regular estimate for the year just closed 1869-70: and the budget estimate for the current year 1870-71, now commencing.

Before adverting to the three divisions in the order above named, I must explain certain improvements now made for the first time in the mode of exhibiting the figures.

In the first place I am about to show the account of the working of the State railway, and the account of the Government with the several guaranteed railway companies, in the same manner as all other parts of the public accounts, that is to say, the real receipts will be shown on the receipt side, and the full payments on the expenditure side. Hitherto, as the Council will remember, the plan followed has been a different one. For instead of showing the receipts on one side and the payments on the other, that is treating the account in the gross, we have shown nothing at all on the receipt side, and only the nett payment (after deduction of receipts) on the other side. This has been the meaning of the item which has hitherto appeared in our financial statements, under the designation of guaranteed railway interest, less nett traffic receipts. In my exposition of last year, I furnished a summary of the main facts from which that important item was derived, namely, the gross amount of interest payable by the State to the shareholders of the guaranteed companies, then the amount recovered by the State from the traffic receipts, and so on. Whether the Council was able to follow me through that explanation, I cannot say. But I felt at the time that it was hardly a satisfactory circumstance that so much had to be said to elucidate an item which ought not to need such elucidation at all, and which ought to be in its nature apparent from the face of the statement. Subsequently this consideration further forced itself upon me. The figures of all other departments are exhibited not in the nett but in the gross. No other heavy payment is shown in diminished proportions by reason of a set-off. If this were to be done generally, then the financial statements would lose half their clearness, and the publicity half its value; and the real nature of the income and expenditure would not be intelligible. Why then should an exception be made in the case of the railway expenditure, which has been for years a large and growing item in the charge side of our financial accounts? There is no good reason whatever for this. On the contrary the public has a clear interest in seeing this part shown in the same way as all other parts of the account. For the payments by Government of interest now approach the sum of 4½ millions sterling annually. How is the rapid accretion of this interest to be appreciated, if it is not shown in the annual statements? On the other hand, the set-off against this is the amount of nett traffic receipts, that is the gross traffic receipts, less working expenses. This also is happily growing fast, and now exceeds 2½ millions

sterling. But still it is, and will probably for some time remain, inadequate; in other words it is and will be less than the interest payments. But we hope that this may gradually approach nearer to the balance of the account; and it concerns every one to know how far this desirable approximation is or is not being attained. This depends on the development of railway traffic and the economy of working expenses. Indeed the working expenses now amount to nearly four millions sterling per annum, and constitute virtually a branch of public expenditure in which the public is as nearly concerned as in any other branch. These points are not only fraught with general interest, but also affect the ultimate financial result and the determination of surplus or deficit. I therefore propose to show the two great items each on its proper side of the account. This course too strictly accords with the terms of the contract between the State and the Companies. After providing for the regular payment by Government to the Companies of the five per cent. interest on the capital paid up, the contract goes on to say that "all monies received by or on account of the Railway Company in India * * * shall be paid into the Treasury" of Government; that the "nett receipts after deducting all sums * * * for the current expenses of working the railway" * * * "shall be applied in the first place towards the discharge of the interest payable" by the Government.

In the second place, as the Council will recollect, the practice has been to exhibit the expenditure in India in detail under the main heads or branches, and then to show the expenditure on account of India in England in the lump or aggregate. Nevertheless the expenditure in England was for the most part not divisible under any new or separate heads, but really pertained to the several branches of the administration in India. Still it was not divided nor classified in our financial statements. Its amount is very considerable, being almost 12 millions, or more than 22 per cent. of our total expenditure. Though of course classified for official purposes, it has heretofore remained absolutely unclassified in our financial statements. One consequence has been this, that the expenditure shown separately in our regular financial statements has never represented the full and complete cost of many of our greatest departments, such as Army, Marine, Public Works, Interest, and others. That the arrangement is so far improvable seems to be beyond question. Last year I did present a supplementary statement calculated to meet the want. But this year I have prepared the statement with a combination of the figures derived from India and from England, so that they now display the full cost of each branch, whencesoever derived and wheresoever incurred The formal and principal state-

ment being thus comprehensively prepared, supplementary statements are added, showing how much is spent for each head in India and how much in England.

In the third place the water rent paid by the landholders for the water obtained from the State canals, has been transferred from the heading of public works income to the heading of land revenue. The amount is important, being more than £500,000, or half a million. The public works income properly includes only sale proceeds of old stores and other items technically called recoveries, with which canal water rent has of course nothing to do; whereas this water rent is income derived by the State from its measures for improving the land by means of irrigation.

In the fourth place, the item of "allowances to village officers" has been combined with the expenditure relating to land revenue, and is no longer shown in a separate heading; and for it has been substituted a heading "Minor Departments" under which will be shown the charges of the trigonometrical, topographical, and geological surveys, and other Departments not readily assignable to any other existing head.

In the fifth place, from the heading of "Education, Science, and Art," we have eliminated, as just explained, the cost of the Survey Department. The surveys, though scientifically conducted, are executed in but a small degree for purposes of science and almost entirely for fiscal, engineering, and other practical purposes. On the other hand, it is of consequence to all those who are interested in the moral and intellectual progress of India that the true charge for education should be shown on the face of the statement. Heretofore the precise progress of this important item has not been perceptible from the statement; and never could be so, while other and foreign charges were mixed up with it. On this occasion, then, the figures which I exhibit are those for education alone.

In the sixth place, the abstract which the Council will remember having seen on former occasions under the title of "statement of estimated cash balances," has been superseded by an improved cash statement, exhibiting an abstract of the entire financial transactions of British India, and showing in a clearer form how for each year the total disbursements of all kinds are actually met, or, in other words, how the ways and means of each year are provided.

So much then for the improvements in the form of the Statements, and I must ask the Council to remember that by reason of these improvements, the figures I now give will not be comparable in detail with those I gave last year, though the ultimate result will be duly comparable.

After this preface (the length of which will be excused from regard to the importance of the topics), I proceed to the actual account of the past year 1868-69.

The receipts were £51,657,658, or more than 51½ millions sterling. The ordinary expenditure amounted to £54,431,688, or near 54½ millions, causing a deficit of £2,774,030, or 2¾ millions of receipts as compared with ordinary expenditure.

In my last financial exposition I explained that there would be a deficit in that year of income as compared with ordinary expenditure. The deficit was then estimated at £970,471, or 1 million. That estimate was necessarily incomplete, being based on eight months' actuals and four months' estimate; the last four months too constituting the most important and critical part of the year. Still the difference between the estimate and the result is very considerable; and I must, as briefly as possible, recapitulate the reasons.

These reasons have arisen in small part only from shortcomings of receipts on the whole. Exclusive of the railway earnings, the receipts in India indeed were £19,077,007, actual, against £19,288,700, of the regular estimate, the difference less being £218,458, or ¼th of a million. I attribute this to the fact of the yield of the Malwa or Bombay opium having been over-estimated by us. The amount indeed taken was fair enough as compared with the actuals of the two preceding years; but the last four months of the year proved abnormally unproductive, and these were the months which did not come within the regular estimate.

The difference, then, between the estimated and the actual deficit was caused mainly by excess of expenditure. In the first place an item of £505,922 is brought about by charging in the accounts the liabilities of the Government in respect to the late Military and Medical funds, which existed chiefly for the benefit of the widows of deceased officers. The arrangements made on the transfer of the fund provided that assets should be gradually year by year appropriated by the Government, which was on the other hand to pay all the pensions and allowances. The transfer occurred during 1867-68. It commenced in that year, and came into full operation during the year under consideration, 1868-69. At the outset these pensions disbursed in England by the Secretary of State were not charged in the English expenditure, but were held by the Secretary of State in a suspense account, that is in the account current between England and India, and were so held at the time when my last financial statement was made. But inasmuch as the Secretary of State has ruled that the pensions are

to be included in the expenditure in England, and as they now constitute a real charge against the revenues, we have deemed it best to include them (subject to the sanction of the Secretary of State) in the English expenditure once for all; and to finally adjust the account. The amount thus to be charged comes, as above stated, to £717,734, of which two-thirds relate to the year 1868-69, and the rest to the previous year 1867-68. Of this sum, £211,812 had already been provided for, being charged in the Madras accounts. The remainder, or £505,922, has now been added, and the whole charged in the English accounts.

Another cause was an excess of £492,004 on the expenditure on public works ordinary. This arose partly on works emergently undertaken in districts suffering from drought or famine. Owing to certain defects in the control of the Public Works Department, some portions of the grants for extraordinary works were made use of for the ordinary works, and the circumstance was not known to the Department when it rendered its estimate to me at the time of my last financial statement. The occurrence of this excess, and the fact of its not being known in time, undoubtedly indicated, as I have above stated, defects in financial control. Those defects have now been carefully searched out, and remedies are being applied, which will we hope prove effectual for prevention in future. Their efficacy will be tested by experience.

Then there was an excess of £186,346 in the Army expenditure, arising partly from the high prices of provisions in drought-stricken districts, and partly from field operations on the frontier. There was a nett excess expenditure again in the Civil departments, chiefly in Marine, Interest, and Miscellaneous, amounting in all to £350,541.

These several items, together with a few others with which I cannot detain the Council, account for the difference between the estimated deficit of one million and the actual deficit of $2\frac{3}{4}$ millions.

Besides the ordinary expenditure above alluded to, there was during the year an extraordinary expenditure of £1,370,613, or $1\frac{1}{3}$ millions devoted in nearly equal proportions to irrigation, to Bombay special fund works, and to the purchase of the State Railway in South-Eastern Bengal.

Thus, the past year 1868-69 ends with a deficit of $2\frac{3}{4}$ millions; and this circumstance suggests the following observation. The Council will remember that in my last financial statement, I put the deficits of the three years 1866-67, 1867-68, and 1868-69, at $4\frac{1}{2}$ millions. This was on the supposition that the deficit of 1868-69 would be one million, whereas it is now seen to be $2\frac{3}{4}$ millions.

Thus the $4\frac{1}{2}$ comes up to $6\frac{1}{4}$ millions. I then showed that there had been an expenditure of $3\frac{1}{2}$ millions on new barracks, which had been undertaken partly in the belief that they would not be treated as ordinary works, and would be excluded from the ordinary account. From that point of view the new barracks would have mainly accounted for the deficits. But now this can no longer be said. The deficits being $6\frac{1}{4}$ millions, of which only $3\frac{1}{2}$ can be accounted for by the barracks, and are susceptible of special justification, it must be admitted that the remainder, $2\frac{3}{4}$ millions, are due to excess of expenditure accepted as chargeable against current income, and represent deficit pure and simple without such special justification.

So much then, in brief, for the actual account of the year that is passed, 1868-69. I now have to advert to the year just expired 1869-70, the figures for which are derived chiefly from actual accounts and partly from estimates.

For 1869-70, then, the receipts are taken at £52,942,482, or 53 millions, which amount exceeds by £699,542, or $\frac{3}{4}$ of a million, the sum of £52,242,940, or $52\frac{1}{4}$ millions estimated in my financial statement of March 1869. The Council will remember that these figures will not admit of simple comparison with that statement by reason of the inclusion of the nett railway traffic receipts and of the receipts in England.

This increase of receipts has arisen notwithstanding failure of the customs and the opium to yield the amount estimated in the budget. The customs revenue was taken at £2,773,500; it is now expected to yield only £2,416,500, showing a difference less of £357,000, or about $\frac{1}{3}$ of a million. The opium revenue was taken at £8,286,540; it is now expected to yield only £7,953,800, showing a difference less of £332,740, or $\frac{1}{3}$ of a million. This falling off of opium revenue has occurred entirely in Bengal, where the price per chest was estimated at Rs. 1,330 or £133, while only an average of Rs. 1,199 or £120 has been realized. In the Madras and Bombay Presidencies, the rate of duty on salt has been raised from Rs. 1-8-0 per maund to Rs. 1-13-0 for the latter half of the year. Had it not been for this additional duty, the deficiency in the salt revenue would have been considerable. On the whole, it may be said that the salt estimate has been just maintained and no more. There have been also other items of deficiencies, which, together with the above two main items, bring up the gross deficiency of regular estimate below budget estimate to £899,222, or nearly one million.

The Council will then ask how, despite of this deficiency, is a nett result of increase on the whole arrived at? Well, it is arrived at as follows. There

is an increase of £161,778, or nearly half a million in land revenue. This is caused partly by the adjustment in account of the accumulated proceeds of the sale of waste lands, the Government promissory notes in which these funds were invested having been cancelled, and debt to that extent having been reduced. Also in the Punjab and notably in the Madras Presidency, the collections of the revenue have proved more favorable than was expected. There is an increase of £71,943 in tributes; this arises from the partial capitalization of the political contributions payable by His Highness the Maharaja Holkar. The increase of £151,600 under the head of assessed taxes is entirely produced by the additional one per cent. income tax imposed for the latter half of the year, without which there would have been a deficiency. The yield of the additional duty is estimated at £350,000. There is taken an increase of £448,172 under the head of miscellaneous; this arises chiefly from adjustment of accounts consequent on the arrangements regarding the Police superannuation fund and the transfer to Government of the Bombay Medical fund. The army receipts show an increase of £181,760. These main items, together with some lesser items, bring up the total increase to £1,598,764, or over 1½ million. And thus on the whole the receipts of the year are now taken at an increase over the budget.

On the other hand, the ordinary expenditure in 1869-70 was estimated in the budget at £52,190,290, or nearly 52½ millions; it is now expected to rise to £53,568,076, or upwards of 53½ millions, showing a difference more of £1,377,786, or 1⅓ million.

This excess has occurred notwithstanding that the expenditure on public works ordinary has been reduced to £5,040,395, instead of £5,834,160 provided in the budget, showing a reduction of £793,765, or ¾ of a million. There have been also various savings, such as £33,938 in the Post Office, £47,673 in the Electric Telegraph, £39,300 in Education, which, together with other items, bring up the total decrease of charges to £1,107,131, or over one million.

Here again the Council will ask, how comes it that, despite these reductions, the total charges and expenditure show an increase on the whole? The answer is that in several departments there have been increases over the budget estimate, some of which I must now explain.

In the two items of interest on public debt and on other accounts, there are increases of £73,516 and £121,925. This has arisen from the proportion of unclaimed dividends having been less than was expected: from the charging

to our accounts of certain interest payments on account of the expedition to Abyssinia, which amount we had hoped to recover from Her Majesty's Government: and from the raising in India of a loan of two and a half millions for public works extraordinary. When the budget was framed, we believed it most probable that this public works loan would be raised in England, and during the latter half of the year, in which case instalments of interest would not fall within this year. Subsequently we received the Secretary of State's sanction to raise the amount in India, and we preferred to bring the loan out at an early period: consequently the payment of interest has fallen within this year.

The increase on forests of £35,084 leads to more than corresponding increase of revenue. The same remark applies to the increase of £123,870 in the payments for opium. This arises from the yield of the opium crop being better than was anticipated when my budget was framed, and consequently greater quantities of the drug being brought to the store-houses. Under the contracts with the cultivators, the quantity brought by them must be paid for. Such payments in a fiscal point of view are not indeed to be regretted, as they conduce on the other hand to enhancement of revenue.

The Police charge was estimated at £2,374,290, and has now risen to £2,440,900, showing an increase of £66,610. This difference, which would have been larger but for counteracting economies, has been caused by the delay in carrying out the abolition of the Police superannuation fund. The delay has arisen (notwithstanding this Council having passed the requisite law) from the difficulty of arranging the details with the several local Governments. The excess charge caused by the delay is neutralized by the consequent increase in the assets credited under Miscellaneous.

There is an increase of £381,882 in Marine. This partly arises from our having charged off finally as expenditure the sum of advances on account of the Mutla or Port Canning port fund, which it is prudent to treat as irrecoverable; and from our proposing, after protracted enquiry, to remit a portion of a long outstanding debt due by the Calcutta port fund to the Government. In this heading, too, is included a sum of £15,000 as a contribution by the Government of India towards the cost of the naval force which Her Majesty's Government is to maintain in the East Indian waters. This is a new charge, entered under instructions from the Secretary of State. It was hardly possible to provide for these in the original estimate, as there was no information at that time as to whether these charges would accrue at all, or in what year they would fall.

The increase of £448,728 in miscellaneous is mainly due to difference between the actual and the estimate of the loss by exchange on Secretary of State's bills and to the charge for the freight of stores from England. The charges of the Political department have increased by £152,290. This increase arises from the payments and presents made to the Ameer of Cabul, which were inadvertently omitted from the estimate.

The increase of £303,972 in superannuation allowances arises from the adjusting of the accounts of the Military Fund already explained. When the budget was framed, the amount of these pensions (£396,292) was entered by the Secretary of State in his remittance account, and not (except the Madras portion (£120,000), which was entered in the estimates in India) included in the charges. But we have deemed it necessary (subject to the sanction of the Secretary of State) to take the remainder, £276,792, out of the English remittance account, and to charge the whole in the regular expenditure in England.

There is an increase of £422,831 in the army charges, of which £292,831 accrued in England for stores, furlough allowances, and pensions, and the rest in India, from the high prices of food and a variety of lesser causes which it would be tedious to detail.

These items, together with some others, for which I need not stop, bring up the total increase to £2,484,917, or 2½ millions.

I have now stated the causes of all the variations in estimate on both sides of the account. That the amount of these variations should be so large is matter for regret. One main cause is traceable to the difficulty of adjusting the accounts under a necessarily complex system dealing with a great variety of interests. And if it be difficult to adjust these accounts with certainty, how much more difficult is it to estimate beforehand what form the adjustment will ultimately take, and what its precise result will be. This year special efforts have been made to clear off all old accounts and to have the books as unencumbered as possible for future years. The subject has my unceasing attention.

The items of expenditure as above specified are taken from the combined figures, Indian and English. It may be interesting however to the Council to note exactly what has been the increase on the English figures taken separately under the old heading of "nett expenditure in England including stores." The amount then for this total set down in the budget, as taken from the Secretary of State's estimate, stood at £10,996,950, it is now expected to stand at £11,868,869, showing an increase of £872,119. This has arisen partly

as already explained from the Military Fund payments (£396,292) not having been included in the estimates of charge, partly from the cost of stores for the different departments in India, and partly from the increased allowances payable under the new rules to civil and military officers.

This particular part of the expenditure is, as the Council knows, under the control of the Secretary of State, and so far no remark is required from me. I should say however that as regards the "stores," the Secretary of State only acts on behalf of the Government of India, like an agent, if the expression may be allowed. The stores are ordered by the India Office in London on indents received from the Government of India; and the Secretary of State's estimate is framed in reference to those indents. It sometimes happens that emergent indents are sent home from India within the year, and these must, *pro tanto*, disturb the estimate, and for that much of disturbance the Government of India is solely answerable. Such has been the case this year in reference to a portion of the stores. I must add that heretofore the financial control in India over the indents sent hence for stores from England has been defective, and measures are being adopted to render it more efficient in future.

Thus much on the details of the receipts and expenditure. In the budget it was estimated that there would be an equilibrium with a small surplus of £52,000. But the receipts being now expected to stand at £52,942,482, or nearly 53 millions, and the expenditure at £53,568,076, or more than 53½ millions, there is anticipated a deficit of £625,594, or more than ½ a million, of receipts below ordinary expenditure.

Besides the above ordinary expenditure, there has been an expenditure extraordinary of £2,616,743, or upwards of 2½ millions, on reproductive public works during the year, such as irrigation, State railways, and on Bombay special fund works.

Instead of an estimated equilibrium, then, the year has ended with a deficit of a considerable amount. In some respects, the adjustment of accounts has improved the figures on the receipt side; while in some respects it has made the figures worse on the expenditure side. If there are windfalls on the one side, there are unexpected drawbacks on the other. Also some share in the responsibility rests with the home authorities. But after allowing for all these considerations, I must fully acknowledge a deficit, for which we are clearly responsible, and regarding which I desire to offer the following observations.

As already seen, we suffered a heavy disappointment in respect to our estimate of the opium revenue on the Bengal side. This arose from a fall in the market price, which fall again is believed to have been caused mainly by the extension of opium cultivation in China itself. We were indeed aware that such cultivation was being in some degree extended, but there was no information at that time to lead to the apprehension that this extension would spread so much as it now appears to be spreading. The further information since obtained of the extension, was not then available. For two years and more previous to the framing of the estimate, the prices had ranged at very high rates which indeed were well sustained up to the eve of the budget being produced. There was no known fact to warrant the rate being taken lower than what was then actually ruling. Still on general and prudential considerations, we took the price at an average of the realizations of the past three years, which brought out a rate less by Rs. 50 or £5 a chest less than what we were then receiving. This estimate has indeed partially failed by reason of events in the interior of a remote, half civilized, and comparatively unknown country like China, the nature of which circumstances is even now but vaguely ascertainable by us.

Then the Customs duties have fallen not only below the budget estimate, but also below the actual realizations of the two preceding years. There has been, as the Council knows, a depression of trade not only in India but in many other countries; and this has mainly caused the falling off in our Customs. But when the budget was produced, there was not a single fact to indicate that such a depression was about to set in. Up to that date the Customs revenue had been increasing yearly for several years; that very year they both increased as was proved by the latest statistics and fiscal returns. The authoritative commercial reports up to date, though noticing fluctuations, and not in all respects sanguine, were yet on the whole favorable and hopeful. There had indeed been drought in some parts of India, but that had not up to date affected trade or Customs, and the prospects of the season had recently improved. There had also been some modifications in the valuations of the tariff in favor of the merchants, but this was allowed for in the estimate.

From the several financial statements made in this Chamber, the Council knows how constant has been the increase in the State income of India. However, not even that normal increase was estimated for. The revenue was estimated at just the sum which had been received in the preceding year, and no more. A slight increase only was taken on account of additional taxation. Does not this look *primâ facie* as if the estimate was moderate?

These causes (which were, as I contend, misfortunes hardly to be foreseen), together with lesser circumstances with which I need not now trouble the Council, threatened the Government of India with the prospect of a serious deficit. How has this prospect been met? Why, by increasing resources, that is by additional income tax, and additional salt duty on the one hand, and by reducing public works ordinary expenditure on the other. Moreover there have been numerous savings and retrenchments carried out in all the provinces of India (for which the general finance is much indebted to the cordial exertions of the several local Governments), which it would be tedious to specify, but of which the total effect is estimated at £200,000. The condition of the year's finance has been bettered by the above measures to the extent of £530,000 on the receipt side and £993,765 on the expenditure side, the total improvement being represented by £1,523,765, or 1½ million.

When introducing into this Council in November last the Bills for extra taxation, I stated that every "effort would be made to destroy the remaining deficit, to run it hard, to break its back so to speak." This promise related of course to receipts and expenditure in India. The figures show that it is in a fair way of being fulfilled.

These last figures, however, are not altogether actuals, but belong to the regular estimate. In India these regular estimates have sometimes been so far falsified by results as to have acquired an ominous significance. On previous occasions the practice has been to frame these regular estimates on eight months' actuals and four months' estimates. In some respects the actuals did not extend to eight months, but only to seven or even to six. This method left a large margin for uncertainty, for the four months of estimate were, as I have explained once to-day, about the four most important in the year, and the very ones when the financial transactions were the largest. The regular estimate which I now present, however, ought to be of a better kind, for it is based on eleven months' actuals for nearly all the receipts and for all civil expenditure in India and ten months for army, marine, and public works; leaving only one month, or in some cases two months, for estimate, which estimate is based again on the actuals of the last months of former years. But even for the last month we have obtained actual data for some important branches on the receipt side especially.

Another cause of the uncertainty in the regular estimates has been the adjustment of many items in the twelfth month. And this cause may perhaps to some extent operate to throw out parts even of the regular estimate I now

present. We have striven to ensure these adjustments being made more and more regularly month by month; so that the pressure may cease to be thrown on the close of the year.

Still after allowance shall have been made for all that can fairly be said in defence of our estimates and accounts,—the recurrence of deficits in time of peace, and the discrepancies between estimates and results which have so frequently happened, do compel us to search for and remedy whatever defects there may be in our system. Despite the many improvements that have been effected, the result proves that some defects must still remain. Two main defects I have above indicated—one of which was vital certainly. They have been, as we hope for the most part, remedied. We shall strive to make the remedy more and more complete after each year's experience.

Over and above these, however, there doubtless are lesser defects. Addressing this Council in November last, I said "we must examine more thoroughly than heretofore the monthly statements of actual receipts * * * we have such an examination now; but we must have it more strictly in future; we must check our financial conclusions more immediately by actuals up to the latest day; we must base our estimates more strictly on the actual results up to date, and less on general conclusions."

I need hardly add that we are acting and shall act more and more closely on these views.

Having thus dealt with the years 1868-69 and 1869-70, I arrive at the third and most important part of my exposition, namely, the budget estimate for 1870-71.

The receipts are taken at £52,327,755, or 52⅓ millions, to be compared with the £52,942,482, or 53 millions estimate for the year just closing, 1869-70.

The land revenue estimate is an aggregate of the estimates received from the local Governments, which have not been materially departed from in any case. There is a decrease of £513,646 as compared with the previous year, of which the return was swollen by the inclusion of the waste land receipts and the collection of some arrears. The effects of the drought of 1868-69 have been felt throughout 1869-70. The stocks of grain in some parts of the country are believed to have become exhausted. The rains of last season, though somewhat delayed, were ultimately abundant. In many

provinces the harvests have been good. In some districts, however, there are still fears. On the whole, the advent of the ensuing rains must be looked for with some anxiety.

The decrease of £28,070 under tributes arises from the capitalization of the Holkar tributes in 1869-70 already alluded to.

The forest revenue shows a continued increase, more than balanced, however, by increased cost on the expenditure side.

Under excise we venture to expect a small increase of £39,300.

The item of assessed taxes I shall reserve for further mention hereafter.

For the Customs we have only taken £2,416,500, being the same amount as that which we have received in the year just expired, during which so much commercial depression has prevailed. That the present yield should not be greater than it is, must be regarded as an unfavorable indication respecting the condition of the people of India. In some places the inhabitants are impoverished by the late drought, or are still apprehensive about their crops; and are unwilling to buy European cloths or other things comparatively luxuries, until they are sure of their food; all which circumstances cause the up-country markets to continue slack. Still in most parts of India the people are advancing in prosperity as much as ever; and regard being had to this consideration, a revival of trade might be hoped for. Again, there have been fluctuations in the trade: January, a very important month, turned out badly; but February was better. March, the month just over, has been a little more favorable. On the other hand, the reports issued by the Calcutta Chamber of Commerce have been and still are unfavorable, and the opening of the Suez Canal has caused some forestalment of imports, and consequently of duty. I trust that things will not become worse than they are, and that we shall receive at least as much in the year 1870-71 as we have received in 1869-70, but I know no fact which would justify me in raising the estimate.

We have carefully considered the expediency of reducing or remitting the export duty on rice exported from India and from Burma. This branch of trade was for some months much depressed, but has of late shown signs of improvement. The depression, however, arose, as we believe, from other causes besides the duties. The prices of produce are rising rather than falling. The demands in China and Japan seem likely to become more brisk; indeed, scarcity is understood to prevail in some parts of Japan. Though fully sensible

of the objections which can be urged against these duties, yet looking to the circumstances of the case and to the financial exigencies of the time, we have decided not to propose any change in the duties at present.

We propose to remit the export duty on shawls and on a few insignificant articles; and on the other hand to include some others in the tariff, and to levy the duty on galvanized iron *ad valorem.* These modifications are not expected to cause any loss of revenue. The shawl duties have operated as virtually transit dues on the shawls from Cashmere, and as regards the British Indian shawls, it is well that they should not be weighted in their competition with the shawls of other countries.

In my last statement I alluded to the progressive increase in the foreign trade of British India, and I stated that the sum total of value had risen from 95 millions in 1866-67 to 101 millions in 1867-68. Since then the ascertained trade of 1868-69 has amounted to 106 millions in value. But after some years of satisfactory progression, the year 1869-70 is almost certain to prove one of retrogression. We now possess the complete returns for nine months of that year, and they show a decrease of 8 per cent. in value and 5 per cent. in quantity as compared with the corresponding period of the preceding year. That the comparison as regards value should be less favourable than that as regards quantity is accounted for by the fact that there has been a reduction of the valuations by tariff. Still there is a falling off of 5 per cent. on the whole; and this is specially perceptible in some important staples of import, such as piece goods and metals, and of exports, such as cotton, rice and indigo. One important item of export, namely jute (fibres) has kept its place as well as ever. The cotton export of 1868-69 amounted to 700,000,000 lbs., or 1¾ millions of bales; but the quantity for 1869-70 will prove considerably less. In 1868-69 there were 11½ millions of lbs. of tea exported; the quantity for 1869-70 seems likely to prove as great. In 1868-69 there were 48 millions of lbs. of coffee exported; the quantity for 1869-70 will certainly prove less. The causes of the depression of trade must doubtless be sought for in other countries besides India. But they have been aggravated by the drought and distress which have prevailed in some parts of India itself.

The salt revenue has been taken at £6,177,370, an amount considerably over that of the previous year, chiefly because the increased duty in Madras and Bombay (5 annas per maund) is to operate for the whole of 1870-71, whereas it operated for only half of 1869-70.

For the opium revenue we have taken £6,922,281, of which £4,905,281 pertain to Bengal and £2,017,000 to Bombay. The Bengal estimate has been taken at Rs. 975 or £97-10 per chest on 49,000 chests. For the first three quarters of the year, the provision is, with the exception of a small deficiency of 1,104 chests, actually in store. For the last quarter, from the information given by the Local Government, we trust that the number of chests is tolerably certain. To provide it we ought to sell 52,000 chests in 1871, a supply which we hope to be in a position to bring forward, but which is certainly not likely to be much exceeded. The real doubt is as to the price per chest, the calculation of which solely depends on forecast. The price, as the Council know, averaged Rs. 1,379, or £137-18 per chest in 1868-69. In 1869-70 it has averaged Rs. 1,199 or £119-18. It has fallen with an unfortunate regularity from Rs. 1,324 or £132-8, at the beginning of the year, to Rs. 1,093 or £109-6 at the close. So far as we can judge from China advices and from local prices, the tendency is downwards. The Government of India possesses now a mass of information, which, though not always clear, does in the main show that the cultivation of the drug is increasing, and is likely to increase further, in China itself. So far as opinion goes, nearly all authorities believe that the opium trade of India with China will be subjected to a degree of competition not heretofore experienced. Taking all these things together, I anticipate the possibility of a further fall in prices, and have considered the rates to which prices have fallen within recent experience. They have gone as low as Rs. 900 and 850 a chest. Though hoping that they will not again fall so low, yet I consider that no estimate of a higher average than Rs. 975 or £97-10 a chest would be safe; and a reasonably safe estimate we must have. So also with the Malwa opium, having regard to the manifold fluctuations of the Bombay market from year to year, even from month to month; and to the probability of its sympathizing with any fall on the Bengal side, I do not consider that any estimate much over 2 millions would be safe. We are indeed receiving 2⅓ millions (£2,357,000) for the year just closed, which quite fulfils the estimate. But then we only received £1,800,000 in the preceding year, when circumstances were more favorable than this. The estimate of the current year, though realized at last, has been a constant source of anxiety. The present crop is reported to have been seriously injured by unfavorable weather. Judging by all known circumstances, I should fear that a falling off may shortly be looked for. So recently as November last, we were confidently assured by the authorities at Indore that we should not realize even two millions in the year just closed.

On the whole, it will be seen that our opium estimate stands at £6,922,281, or 6¾ millions, being less by £1,031,159, or one million, than the receipts

of the previous year; while our expenditure is expected to rise by £164,910, making a total deterioration under this head of £1,196,069.

It will be observed that a decrease of £1,604,600, or 1½ millions under stamps, is balanced by an increase of £1,692,700 under law and justice. This represents the transfer of the receipts of judicial stamps (now levied under the new Court Fees Act) from the one head to the other.

The large decrease of £677,298, or ⅔ million under the head of miscellaneous, arises from the fact of there having been extraordinary receipts, commonly known as "windfalls," in 1869-70 which are not expected to recur.

The railway receipts net are taken at £3,125,258 at an increase of £211,084 over the year just passed, that is £6,795,058 gross earnings less £3,669,800 working expenses, the traffic being represented by seven millions of tons and fifteen millions passenger journeys; and all this on 4,840 miles of open line. These are high figures: if realized, they will indicate a satisfactory progress of railway traffic; they are rendered by the Public Works Department. Seeing that some 600 miles of new line are to be opened in the year, increase of traffic may be looked for; but then there will be increase of working expenses. On the whole, this item must be regarded as necessarily uncertain, as being dependent on traffic the growth of which we cannot exactly foresee.

I now turn to the expenditure side, and shall notice together firstly the items of the increase; and, secondly, the items of decrease.

There is an increase of £270,032 in interest. This increase is due to our having to pay a full year's interest on the loans of 1869-70, on which only half a year's interest fell to be paid in that year; to a large amount of interest properly pertaining to 1869-70 being thrown forward to 1870-71, owing to the late arrival of the last English mail, and to a new loan to be raised this year, the particulars of which I shall explain presently.

There is an increase of £117,606 for forests, which is almost met by the corresponding increase of revenue. Also there is, as already stated, an increase of £164,910 in opium, owing to extension of cultivation, and of £27,944 in excise for the purchase of opium for home consumption: these items also tend directly to increase of revenue. Similar remarks apply to the increase of £103,299 in salt, attributable chiefly to the arrangements for the manufacture of alimentary salt at the Sambhur lake in Rajpootana and in various parts of North-West Provinces and of Oude, all which measures are connected with fiscal improvement.

The increase of £178,698 in law and justice is due chiefly to the transfer of discount from stamps, the revenue from which is now to be credited as law and justice receipts, and to the charges for the service of processes, which with the corresponding receipts are now entered in the imperial accounts.

The increase of £66,498 in education will not be regretted.

The increase, £126,681, in superannuation allowances is due to the reductions in the police (which involve gratuity payments) and to the anticipated operation of the rule for the compulsory retirement of public servants at the age of 55 years.

There are small increases under several civil departments, such as land revenue, ecclesiastical, medical services. These are inevitable, as they are brought about by the progressive scale of salaries so frequently allowed of late. In recent years it has been thought more economical to sanction gradual progress towards a maximum than to allow the maximum at once. Of course, this practice, however good in itself, does at first cause the expenditure to rise slightly from one year to another. The increase in law and justice arises partly from a transfer of charge from the head of stamps, which department shows a corresponding decrease.

An increase will be observed of £56,181 for the Electric Telegraph department, not counterbalanced by any increase of receipts from this source. This arises chiefly from stores not having been sent out from England during the current year, so that an extra supply must be paid for in 1870-71.

The increase of £275,268 in railway charges relates chiefly to interest, and is due to more capital being raised in England for the prosecution of the works.

The increases of all kinds amount to £1,496,219 or 1½ million, apparently a large sum. But the above analysis shows that £678,964, the aggregate of the increase under forests, excise, assessed taxes, salt, opium, and railways, is absolutely necessary to be laid out in order to bring in a more than corresponding return of revenue. Again, £452,894, the aggregate of the increase, under interest, telegraph, and superannuation allowances, is inevitable, and under existing rules is not preventible by any action we could take. Thus the sum of £1,131,858, or nearly three-fourths of the total increase, is demonstrably indispensable. To this category the increase for education forms, of course, a special exception.

On the other hand, among the decreases of expenditure, there is the item of £129,633 under interest on service and other accounts; this arises from

cessation of payments on the Police Superannuation and Medical funds and to the Presidency Banks for temporary advances.

There is a decrease of £120,936 in the Police department, of which however, a part is owing to the reduction of pay from gross to nett upon the abolition of the Superannuation fund, the rest being due to reduction of establishments. The decrease of £481,009 in the Marine department is mainly owing to the large adjustment in 1869-70 of irrecoverable advances. Here also is included a sum of £70,000 as the contribution of the Government of India towards the maintenance of naval squadron to be kept up by the Admiralty in the Indian seas as already explained.

In the army charges, there is an important reduction of £731,551, or ¾ million: the total being lowered from £16,476,892 to £15,745,341; this is partly nominal, the expenditure in England in 1869-70 having been, in some respects, abnormal. But about two-thirds are real, brought about chiefly by the reductions in the general staff in India, and in the European cavalry and infantry, as sanctioned by Her Majesty's Government after some correspondence with the Government of India. We have been only able to take a very small decrease on account of the reductions in the artillery and the native army, regarding which the recommendations of the Government of India are under the consideration of Her Majesty's Government in England. After setting off the diminished recoveries which we expect, the net estimated saving in the army is £554,016, or ½ a million, the net expenditure for the army being estimated at £15,009,116, or just 15 millions, a lower sum than has been paid in any year since 1863-64.

The grant for public works ordinary exhibits a reduction of £1,041,995, or more than a million; the amount for 1870-71 being £3,998,400 against £5,040,395 in 1869-70 and £5,834,160 in 1868-69. Thus in the course of a year, we have lowered our grant by £1,835,760 or more than 1¾ millions, or 31½ per cent. on a total of about six millions. The necessity for such reduction, which must of course retard the completion of many useful works, is much to be regretted. But financial exigency is imperative.

I should add that out of the above grant of four millions, £658,955 or more than ½ million represents the expenditure on the new barracks for the European troops.

The total of these decreases amounts to £2,883,669, or nearly 3 millions. This for the most represents real reductions of establishment or of works; and by it may be measured, to some extent, the efforts made by the Government of India to meet the financial exigency of the time.

The Council—remembering that retrenchments made on paper have sometimes failed to be carried out, and that reductions in estimate are sometimes found to be not realized in actual accounts—may ask me how I can affirm that the above large amount of reduction will really be effected? To this I should answer that the largest part of the reduction, that relating to public works, is so far certain in that the disbursements depend solely upon the grants. No more than what has been granted will be disbursed, and the orders in detail regarding the grants have been sent already to the several Local Governments. So with the army reductions; those which I have allowed for have actually been sanctioned by the Secretary of State, and the orders have gone to the proper authorities: some have even been carried out,—for instance two cavalry regiments have actually embarked for England. Some further reductions are almost certain, but we have ventured to allow for them only the sum of £70,000. So with the interest reduction, the charges in question have actually ceased. Again, as regards the police reduction, a part of it is quite certain, nothing more being needed than orders to the audit department; and to the rest of that reduction the Local Governments have actually signified their agreement.

The increases being balanced against decreases, the result is an expenditure of £52,164,315, or 52⅕ millions, against £53,568,076, or more than 53½ millions of the preceding year, with a net reduction of £1,403,761, or nearly 1½ million of expenditure.

In framing the estimate I have not forgotten that there are certain pecuniary claims on the part of His Highness the Náwab Názim of Bengal, still pending. I cannot at all foresee whether they will be found sustainable. We have decided that we are not justified in making any budget provision in this year on this account.

After this analysis of the receipts and expenditure of the current year now commencing, I must ask the Council to revert to the heading of assessed taxes which I reserved for separate consideration. We have taken for this the sum of £2,180,000 or nearly 2⅛ millions sterling. The additional rate of one per cent., levied by Act XXIII of 1869, in order to bring the one per cent., rate up to 2 per cent., expired on the 31st of March. As the law stands then at this moment, the one per cent., is all that is leviable. According to the experience of the year just over, 1869-70, the yield of one per cent., would amount to £700,000. Now, if we were to take that amount only instead of the £2,180,000 now taken, there would be a difference less of receipts to

the extent of £1,480,000, or $1\frac{1}{2}$ million, and this difference would cause a deficit on income below ordinary expenditure of £1,316,560, or $1\frac{1}{3}$ million. As the Council so well knows, we could not at this time appear before the public with a deficit in our budget. At least we could not adopt such an alternative, while any legitimate or reasonable resource remained to us.

My exposition of the estimate of the receipts will have proved to the Council that the revenues generally are flourishing, though not quite so prosperous as they sometimes are. But in one important item, opium, there is a serious falling off, mainly owing to events and circumstances in China.

I have shown to-day what large reductions of expenditure have been effected, always with hard effort, and sometimes with much sacrifice. Then I have shown how inevitable are most of the increases of expenditure. Still after reckoning the sum of these as a set-off, the net result is a decrease on the whole of nearly $1\frac{1}{2}$ million (£1,403,761) of expenditure. I by no means intend to imply that reduction has reached its final limits; we shall continue to strive for further reduction more and more. But it is impossible to say at what time or on what date additional reductions may take effect. Indeed the incessant demands made on the treasury for countless objects of reform and improvement are too well known to the Council to require recapitulation here Meanwhile we must take the receipts and expenditure as they are expected to stand. And with a deficit of $1\frac{1}{3}$ million distinctly apparent, some recourse to additional taxation, some resort to means of enhancing income, becomes altogether unavoidable. Considering the actual deficits which have occurred in past years, and the circumstance that the year just over is expected to close with a substantial deficit, instead of the equilibrium that was expected, and this too despite all the exertions that have been put forth, we regard it as essential to the due administration of the finances and to the maintaining of the financial credit of the country, that yet further exertions should be made. Moreover, this is, if possible, even more needful than ever, since, as shown in my last financial statement, the public credit is to be pledged for the construction of extraordinary public works of a character remunerative to the State and beneficial to the people.

We are, therefore, compelled to propose, however reluctantly, to raise the income tax to 6 pies in the rupee or $3\frac{1}{8}$ per cent., and to apply to this Council to vote us the power of thus covering, by additional taxation, the deficit which must otherwise be presented.

As explained in my last financial statement, there are great difficulties in immediately adding to our resources by any other means than direct taxation. If then the revenues are to be immediately enhanced, this can only be effected by the help of the income tax.

Such then is the proposal which I have, on behalf of the Government of India, to make to this Council, together with a request for leave to introduce a Bill for the imposition of an income tax, at the rate of six pies in the rupee.

I need not repeat the arguments used in my last financial statement regarding the imposition of an income tax in India. It is with regret and reluctance that we bend to the necessity of raising the rate from 1 to $3\frac{1}{8}$ per cent. within so brief a period. But the recurrence of deficit at this time cannot otherwise be prevented.

I have stated the rate at $3\frac{1}{8}$ per cent. In England, as the Council knows, there is no percentage rate adopted for this purpose; the duty being levied at so many pence in the pound sterling. We have determined to adopt, as in England, a poundage in place of a percentage rate. Following that principle, I have to propose that the duty be for the future taken at so many pies in the rupee: two pies would be assumed as the approximate equivalent of one per cent., four pies of two per cent., and so on. I should add that this mode of rating the duty will be somewhat (though very slightly) in favor of the revenue.

But if the rate is to be thus raised, then the principle of rough assessment by classes in the schedule which regulates the existing tax, can no longer be adhered to. A system which may have worked sufficiently well while the rate of duty was low (that is, one per cent.) will no longer work satisfactorily when the rate becomes higher. When people come to be assessed to 6 pies in the rupee income tax, they will assuredly demand a more precise mode of assessment than that which now prevails. The tax-payer will require that the assessment be made upon some fair estimate of his particular income, and will not be content to be assessed upon an average derived from the maximum and minimum incomes of a class. Now, if anything like an assessment on estimated income of each individual tax-payer is to be attempted, returns of income must be called for from the tax-payers. Or even if with the lower classes of income the Collector may be able to dispense with the returns, he must clearly have the power of calling for such returns in all cases of more considerable income, and with the higher classes of income he should be obliged to call for such returns. The new Bill, then, which I have

to lay on the table provides for the assimilation of the procedure to the more regular methods of assessing income tax: care having been taken to render it as simple and easy as possible, consistently with the important object in view. If the Council shall grant me leave to introduce the Bill, I shall have further opportunity of explaining its provisions.

Having thus explained the principle of the tax, I must advert to the method by which the estimate of its probable yield has been framed. As the Council will have observed, the amount is taken at £2,180,000, of which £2,100,000 is assumed at the known rate of £700,000 for each one per cent., and £80,000 for the gain by the substitution of 6 pies in the rupee for three per cent. I say known rate, inasmuch as the regular estimate of the one and a half per cent., income tax of 1869-70, based on data of eleven months' actuals, gives £1,051,600, which again gives £700,000 for one per cent. This seems a sure foundation to proceed upon, especially as it is known that in 1869-70 the tax was exposed to disadvantages which will not recur. Some portions of the tax collected in the first month had to be credited to the preceding year; the extra one per cent., imposed in the middle of the year, could not be fully realized at first; some arrears are indeed known to be outstanding. This consideration justifies our expecting more than £700,000 for one per cent., and our assuming £700,000 for each one per cent.; though otherwise it might be apprehended that each ascending step in the percentage would yield somewhat less and less. The estimates of the local Governments embodying what they intend to demand and collect, framed for a 1½ per cent., tax, amount in the aggregate to £1,103,740, which at three per cent., would yield £2,287,480, which is more than what we have ventured to take. Then we have compared the yield of the first income tax of 1860. The only year in which that tax was fully collected was 1861-62, when it produced £2,054,696, or just over two millions at four per cent., on incomes down to Rs. 500 (£50) and at two per cent., on incomes between Rs. 500 and Rs. 200 (£20). What portion of this belonged to the division between Rs. 500 and 200, I cannot state; but it must have been small. On the whole it may be said that we now expect to get from a three per cent., tax rather more than what we got from a four per cent., tax ten years ago, showing an expected improvement of 25 per cent., and more. This seems a reasonable expectation, when it is considered not only that the income of the country has greatly increased within the ten years, but also that our administration of these kinds of taxes has improved. As a proof of the improved administration, I may observe that in 1864-65 there was a three per cent., income tax like the one now proposed. It yielded £1,300,000, which gave £433,000 for each one per

cent. But then the assessments made at the outset had been continued without alteration from year to year, and the administration was less strict than it now is; though it is still far from being as strict as it might be. But we have seen that in 1869-70 one per cent. yields £700,000 for one per cent., showing an improvement of 61·7 per cent. over 1864-65.

As to the duration of the new income tax, I can make no promise whatever. It is our earnest hope that the tax may not last beyond the current year 1870-71, at its present rate. But the realization of any such hope must be entirely dependent on circumstances.

Such then is the budget for 1870-71, the estimate of receipts amounting to £52,327,755 or 52⅓ millions, and of ordinary expenditure to £52,164,315 or 52¼ millions, leaving a small surplus of £163,440, a balance which hardly amounts to more than an equilibrium. We bear in mind that the above estimated surplus is very small; smaller than we should wish it to be; smaller indeed than it ought to be. But then what difficulties, what sacrifices we have had to undergo, in order to make it even the little that it is! The Secretary of State has enjoined us to provide a substantial surplus if we possibly can. His Grace, commenting on my last financial statement, wrote thus:—"In previous financial despatches to the Government of India, it has been stated that your estimates should be so framed as to show a probable surplus of from half a million to a million sterling; in that opinion I concur* * * I have already called your attention to army charges* * * and I shall hope to find that you have been able to effect reduction of expenditure also in some other branches of administration. Unless this can be done, it is clear that it will be necessary to devise some means of increasing the annual income, or otherwise a failure in the full estimated receipt from opium, the loss of any portion of revenue from unfavorable seasons, or any extraordinary military charges, would certainly convert the estimated surplus into a large deficit."

My exposition to-day will have shown how hard we have striven to act up to these instructions. We have reduced the army charges and other expenditure. We have devised means of increasing the annual income. But we have not yet been able to provide a surplus of half a million in the estimate. To effect this, we must have proposed a greater reduction of expenditure than what we can surely reckon on effecting within the year; or else we must have proposed additional taxation even beyond the proposals I am announcing to-day; and the difficulty of doing this is manifest. But though we are unable to provide the surplus to-day, the necessity of such provision within the earliest

practicable time is constantly present to our consideration. Until this is fully effectually provided, I shall not be able to affirm that our finance is in a satisfactory condition. As yet I can only express my hope that it will be found to be improving.

Besides the ordinary expenditure, we are prepared for an expenditure of £3,062,300, or over 3 millions, on public works extraordinary, to be provided for by loan, of which £1,732,500 or 1¾ millions are for irrigation works, and £1,229,800 or 1¼ millions for State railways. The irrigation works relate to projects in Bengal, in Madras, in Bombay, in the North-West Provinces, in the Punjab, in Oude, and in the Central Provinces.

The principle of constructing some portion of the railways in India by direct State agency instead of through companies, has been further affirmed during the year by the Secretary of State. The lines on which the above expenditure is to be incurred, are the Lahore and Peshawur Railway, the railway between Delhi and Jyepore passing through the salt-producing districts of Rajpootana. Within the year it has been decided that the Bombay special funds works shall no longer be classed as extraordinary, but shall be included in the category of ordinary works: they are, therefore, not included in the above description. I may here note that the purchase of the property of the Elphinstone Land Company will not form any charge to the State.

I may here add that negotiations are in progress with the Maharaja Holkar, whereby His Highness will provide funds at 4½ per cent. interest for the construction of a railway from Malwa to join the trunk line of the Great Indian Peninsula Railway.

A desire has been often expressed that an audited account should be promulgated annually of the sums raised for, and spent on, public works extraordinary. Such an account is now being prepared, and is to be kept up from year to year. We have decided to commence the account from 1869-70, being the year when the classes of works to be reckoned as extraordinary were for the first time defined, and when the raising and the expending of money for those purposes were regulated on that principle.

I have now to advert to the loan arrangements of the year 1870-71.

It will be recollected that in my last financial statement I announced a series of loans aggregating five millions, of which one million consisted of renewal of old debt, 3½ millions of loans for public works extraordinary, and ½ a million to recoup the cash balances for advances made to municipalities.

The renewal of one million has been effected within the just expired year. Of the 3½ millions for public works extraordinary, 2 were to be raised in India and 1½ in England. The ½ million has been raised in England, instead of being raised, as was first intended, in India.

In my last financial statement, however, I mentioned that the cash balances are not even yet restored to their due proportions, and I added that "if, as the year proceeds, the accounts shall be unfavorable, some additional temporary resource will have to be provided." Within the year, the Government of India has accepted an offer of the Maharaja of Puttiala to invest £400,000 in our public securities. This having now been treated as permanent debt, we have decided to consider it as having been raised for public works extraordinary.

This sum, added to the sums raised on account of the three millions and a half loan which were slightly in excess of that amount, brings up the total to upwards of four millions.

Out of the four millions raised as above for public works extraordinary, and held at the credit of this branch of the public works department, £2,616,743, or more than 2½ millions, are being spent in the year, leaving £1,383,257, or, nearly 1½ million, balance in hand due by the loan department to the public works, and to be carried on to credit in the State account of the works.

So much for the year 1869-70; then for the year 1870-71, the proposed arrangement is as follows.

As I have already explained to-day, the proposed expenditure during the year on public works extraordinary amounts to £3,062,300, or just three millions to be provided for by loan.

The Secretary of State has intimated his intention of raising two millions in England, leaving us to borrow in India such sums as may be found necessary to carry on the works on the scale intended. But, considering that we have as shown above, a balance in hand of loan money to the sum of 1⅓ millions from 1869-70, we are unwilling to borrow if we can help it. And in the present state of our cash balances, there is no apparent necessity for bringing out any loan in India at all. It is not then our intention to raise any funds by loan until the autumn at least. By that time, the prospects of the year will be more clear, and our position in respect to ways and means can be reviewed, and a further decision as to the necessity or otherwise of raising any loan can be arrived at. But it is our hope (as at present informed) to conduct the finance of the year without further loan.

I should here add that in December last, we decided that the holders of the 5 per cent. public works loan of 1855, amounting to two millions, which fell due for repayment on the 31st March, should have the option of either receiving payment in cash, or of accepting fresh stock of the four and a half per cent. loan. The returns are not quite made up, but about $\frac{7}{8}$ of the stock has been or is being tendered for conversion; so that it may be said that our terms have been generally accepted. This indeed is only what might have been anticipated, inasmuch as for some time past the $4\frac{1}{2}$ per cent. stock has been quoted at or above 2 per cent. premium.

Such being the provision made for the ways and means of the year, I have to explain the returns of the cash balances. In my statement of last year I explained what a variety of large items, over and above the revenues and expenditure proper of the Government, contributes to make up this great account. It has been found, however, that the old form of statement was in some respects obscure, and an improved form has been devised, as the Council will see, according to which the figures are exhibited for the years 1868-69, 1869-70 and 1870-71. As the returns received from England often affect those obtained in India, both categories have been combined in this statement. I shall just glance at the main features of the statement for 1870-71, so as to make the technical designations intelligible. The headings of ordinary income, of ordinary and of extraordinary expenditure, are taken from the budget of the year as to-day presented. The heading of deposits and advances comprises the finances of the local funds, the funds of the civil services, the judicial deposit branch, the advances for local works and for a variety of purposes. The heads of local remittances and inter-provincial and inter-departmental transactions represent the unadjusted expenditure of India, and are interesting items. The remittance account between England and India comprises a large amount of civil service pensions, and a variety of petty advances in the military branch. There are also a good many unadjusted items under this head. The bills of exchange represent the amount remitted from India annually to meet the expenditure in England. The railway capital heading means the amount raised in England for the construction of railways in India. Here it may be observed that year by year we are spending more in India than we raise in England; this arises from the fact that in previous years we spent less in India than we received in England, and that we have now to make up the difference. The last item, namely, "borrowed," must be taken together with the item of "debt paid." This year we are to borrow $5\frac{3}{4}$ millions (£5,808,770) but then we are to pay off old debt of $2\frac{1}{4}$ millions (£2,220,470), which leaves £1,830,000 for

the Elphinstone property at Bombay and £1,758,300 or nearly 2 millions new loan in England. In all £3,588,300 or 3½ millions will be added to our debt.

I must now advert to the amount of the cash balances. According to my last statement we hoped to commence the year just closed, 1869-70, with a cash balance of £ 11,917,473, or close on 12 millions, but we really did commence it with a balance of only £10,175,804, or less than 10½ millions. In case this discrepancy be attributed to some fault in the Account department, I should, in justice to that department, explain that such is not the case; for that part of the statement which depended on the Account department turned out correct enough; the discrepancy occurred in that part of the estimate for which the Government of India is responsible. The difference indeed arose solely from the income of the year 1868-69 being less, and the expenditure more, than was anticipated. The causes I have already explained to-day in the earlier part of this exposition. Again, in my last statement the cash balance at the close of the year 1869-70, was estimated at £11,627,310, or 11½ millions. It is now expected to amount to £13,644,859, or more than 13½ millions. The Council will naturally ask, how it is that, notwithstanding the financial troubles of the year, we end with more money in the treasury than was expected? The answer is, that out of the 3½ millions borrowed for public works extraordinary during the year, we have still one million in hand, and that there was the Puttiala loan besides to the amount of £400,000. Also the accident of the first English mail of last month, March, not having reached Calcutta till just after the close of that month, has caused a quarter of a million of bills and drafts, which were expected to be paid in March, that is in 1869-70, to fall into the following year, 1870-71. This too partly accounts for the difference observable in the cash statement between bills drawn and bills paid. The last-named sum of the cash balance is still, however, to some extent only an estimate which may be disturbed by variations in items on either side of an account, which, both sides taken together, amounts in all to 168 millions. This estimate then of cash balances is nothing more than the balancing entry at the end of a really vast account. It has however been further checked by the actual assets in the various treasuries in India at the latest dates. On the 31st January last, there were actually £11,839,097, or nearly 12 millions in hand; on the 28th February (the latest month), there were £12,692,129, or over 12½ millions. Telegraphic estimates received from the several local Accountants General so recently as yesterday, make the actual cash balances on the 31st March £13,500,000. These estimates being framed with a knowledge of the actual balances at the presidency towns and with recent information as to the state of the balances at the more important treasuries in

the interior, are not likely to be far wrong. The result—thus derived from opposite and independent data—corresponds very nearly with the amount (£13,644,859) worked out from our estimate and gives me considerable confidence in its general accuracy. The estimate must be exhibited in this manner, under our existing system, although it is exposed to so many chances. But I have now endeavoured to narrow the uncertainty by the comparison with the actual assets at the commencement of the eleventh month of the year, and at even later dates, which leaves a margin of one month only, or even less than one month, for uncertainty.

Commencing then the current year 1870-71 with a cash balance of 13½ millions as above seen, we estimate the receipts of our general treasury, including revenues, deposits, recoveries, loans, and the like at £84,265,466, or 84¼ millions on the one side: and the disbursements, including expenditure, ordinary and extraordinary, payments on account of debt, of Secretary of State's bills and the like at £73,696,023, or 73⅔ millions on the other side, leaving a balance of £10,569,443, or 10½ millions, as the cash balance at the close of the year. It may be here asked why we expect the cash balances to be less by three millions this time twelve month than they are now. The answer is that we are to spend one million on public works extraordinary more than we borrow; that we are to advance half a million for the construction of railways in India more than we receive on that account in England; that the remittance account shows an adverse balance; that in the deposit and advance account the payments are slightly to exceed the receipts. These several items fully account for the difference.

Having now completed my exposition of the finances, I shall, before concluding, mention that the subject of the financial relations between the Supreme Government and the several Local Governments is still under the consideration of the Government of India. I have of course formed and recorded my own opinion on the whole subject. But it is really not in my power to say anything regarding the matter on the present occasion, as I cannot tell what decision will be arrived at, or by what time, if formed, it could be carried out.

I may here add that some additional portion of the cash reserve of the Paper Currency department will probably be invested in Government securities. The Council may remember that in my last financial statement, I mentioned that the note circulation had risen to an amount above ten millions; it has since then risen further at one time to a sum between 11⅓ and 11½ millions though of course there are fluctuations from time to time. The gradual and

progressive increase in the circulation has been held to justify our enhancing a portion of the reserve which is held in Government securities. The amount thus to be held in securities is limited by law to four millions. We propose to extend that limitation to six millions, and for this we have the express sanction of the Secretary of State. I have introduced a Bill for this purpose into this Council. The operation if authorized would be cautiously tentative, and some considerable time may elapse before the limit is approached.

It is a source of much regret to me that we have not yet been able to promulgate the rules, long since prepared, for the further development of Savings Banks in the interior of the country. But it has been necessary to consult many local authorities, and some delay has been unavoidable. The matter is however receiving attention.

As the Council probably knows, no marked result has as yet been produced by the Notification of November 1868, whereby it was announced that the sovereign would be taken at the Government treasuries as an equivalent for ten rupees four annas, instead of ten rupees as before. The total number of sovereigns received in the Calcutta Treasury alone since that date exceeds 150,000. The importation of gold into India from November 1868 to January 1870 amounted to 7 millions sterling against 6 millions of the corresponding previous period.

In my last financial statement, allusion was made to the satisfactory condition of our public credit as proved by the prices of the Government stocks of all denominations. This favorable indication has again lasted throughout the year 1869-70, and this notwithstanding the prospect of the revenues turning out less, and the public expenditure more, than was estimated for. During this year the premia on Government 5 per cent. stock reached 9½ per cent., which rate was maintained through the months of June and July 1869; at the same period the premia on 5½ per cent. stock exceeded 14 per cent., the price of 4 per cents. at that time ranged between 94 and 95, a rate that has since been steadily maintained. The gradual decline since 1868 in the value of 5 and 5½ per cent. stocks may of course be attributed to the diminution of the period for which the loans at those rates have currency. The loan of two millions bearing four per cent. interest, which was raised in India in April, the first month of the year, was subscribed on favorable terms, that is to say, at the average rate of $90\frac{3}{16}$ for every hundred rupees; the result being that the money was obtained at just over 4½ per cent. Subscriptions were invited by tenders, that is by open competition. Though the amount required was not more than two mil-

lions, yet the aggregate of tenders came to upwards of 5½ millions, and the number of persons who made tenders came to 611. Of the amount of tenders accepted, about one-fourth belonged to Natives of India; again out of 246 parties whose tenders were successful, 121 were Natives.

Such then is the budget for 1870-71. The main points in my exposition have been—

that, for 1868-69, the deficit of income as compared with the ordinary expenditure, originally estimated at one million, has, from various causes, swollen to 2¾ millions;

that, for 1869-70, instead of the equilibrium expected to be maintained between income and ordinary expenditure, there will be a deficit;

that, nevertheless, this deficit, which at one time threatened to be great, has been much reduced by additional taxation and by retrenchment of expenditure;

that from this additional taxation and this retrenchment of expenditure, the total gain to the finances within the year has amounted to 1½ millions;

that, for 1870-71, there is estimated a small surplus of income over ordinary expenditure;

that this estimate is arrived at after doubling the income tax, and reducing expenditure in the army and on the public works by 1¾ million;

that after balancing increases against decreases of all kinds, there is still a nett reduction of 1½ million on the total expenditure of all descriptions;

that, in 1870-71, there are to be two millions of new taxation as compared with 1868-69, and three quarters of a million as compared with 1869-70; which taxation, however, for the most part, falls on the middle and upper classes, and but little on the poorer classes of the Natives of India;

that the expenditure on public works ordinary which stood at 6⅕th millions in 1868-69, has been reduced to 5 millions in 1869-70, and to 4 millions for 1870-71;

that, besides the ordinary expenditure, there has been an extraordinary expenditure on reproductive public works, to be provided for by loan, in 1868-69 of 1¾ millions, and in 1869-70 of 2½ millions, and that in 1870-71 there is proposed to be an expenditure of 3 millions;

that while the expenditure on public works ordinary has been falling, the expenditure on public works extraordinary has been proportionably rising;

that for the public works extraordinary, in 1869-70, there were borrowed 4 millions, out of which 2½ millions have been actually expended in the year, leaving 1½ million in hand;

that for the carrying on of public works extraordinary in 1870-71, at an expenditure of 3 millions, there are 2 millions to be raised in England, and that no new loan is to be raised in India at present; save the ¼ of a million to be advanced by the Mahárájá Holkar for State railways.

that the object of our financial arrangements at present is 'to surmount the difficulties of the time, without adding any thing to the national debt for ordinary expenditure;

that we are striving to adhere strictly to the principle of accounting separately for sums borrowed for extraordinary and reproductive public works.

In concluding my exposition last year, I spoke of growing commerce and of expanding income. To-day, unfortunately, I have had to speak of trade depressed and of income diminished. But last year, I spoke also of an ordinary expenditure held in control; of the application of State capital to material improvement; of the resources furnished by public credit. And to-day, fortunately, I have been able again to speak of these. Last year the burden of my exposition was the existence of deficit. My hope then was that the deficit would be put an end to, but to-day I have had to acknowledge that the evil still exists, despite our efforts for its extinction. Once more, however, we have endeavoured to provide for at least an equilibrium, and even for a surplus. It remains to be seen whether this will be accomplished; but at all events no exertion will be spared for its accomplishment. And although great financial difficulties have occurred, still the general condition of the people, and the continued progress of the country, encourage us to hope that those difficulties, already so strenuously encountered, will be ultimately overcome."

His Excellency the COMMANDER-IN-CHIEF,—" MY LORD, the time being very short which is to elapse before I quit India, I trust Your Excellency in Council will excuse me for offering a few remarks to-day, instead of waiting

for the discussion on my hon'ble friend's projects, which will take place at a date prohibiting my presence with regard to my engagements.

"In the first place, I would venture to say that the proposal to raise the income-tax has, under the special circumstances which have been stated, my full support. I have always been opposed to a high income-tax in India, and I am opposed to it still, and I have been engaged in many a struggle against such a tax for this country when reasons could not be assigned sufficient to satisfy my judgment. I believe that a sound policy, under ordinary circumstances, demands that an income-tax should not exceed one per cent. in India, and that a higher rate should be reserved as the resource for extraordinary emergencies.

"It must, I think, be admitted, with regard to what was published under the authority of Government last year, that although it may be inappropriate to apply the word 'crisis' to our difficulties of the autumn, it is certainly accurate to say that an extraordinary emergency had arisen. Unfortunately, as so clearly shown by my hon'ble friend, we are still labouring under the difficulties which may thus be called extraordinary, the inference being that the Government is justified in having recourse to what, I for one, must characterise as extraordinary.

"In support of this position I need hardly remind the Council that, whatever the good-will of the departments of administration, the financial effect of reduction, even if as large as described by my hon'ble friend, stands, as he has so forcibly impressed on the Council, in need of other assistance. In short, it is to the development of resources, as well as to ministerial reduction, that we must look for relief of an effective kind. Perhaps, however, with my views about an income-tax, I may express the hope that, at no great distance of time, other financial arrangements may lead to a reduced income-tax. I may give utterance to the belief that the Budget, now produced by my hon'ble friend, is one of transition; a Budget which, by its trenchant, but as I hope temporary, dealing with the income-tax is to afford the time which is required for the elaboration of other plans—plans calculated to add to the responsibility of local administration, to add to its independence with a corresponding relief of the imperial revenues. In support of this view I may mention that the Income Tax Bill is framed so as to affect but one year only, and that it will expire on the 31st March 1871.

"I now pass on, from the general question of the policy of taxation announced by my hon'ble friend, to a subject with which I am more immediately connected.

"It is apparent to the Council from the figures laid before it, that certain credit is taken for military reductions, which either have been ordered, or which are expected to be ordered, in the course of the current financial year. The actual nett financial result has been stated at half a million of decreased expenditure. This result might have been larger but for circumstances beyond our control. Rather more than a year ago we received a very peremptory order from the Secretary of State to revise our military expenditure with the view, if possible, of reducing it by a million and a half of money. The challenge was fairly accepted by the Government, and after prolonged and careful consultation, comprehensive schemes were sent to England, which, if carried into execution, would not finally have fallen far short of a million in their economical results. These schemes affected the British Cavalry and Infantry in India, the British Artillery and the three Native Armies. It was believed that these schemes had overcome the practical difficulty of all military reductions, namely, the combination of economy with the maintenance of existing strength where it was really wanted, the insurance of a considerable saving of money, without in any manner sacrificing military efficiency or political security. The strength of the British Forces was to be maintained at the same number as that comprehended in the existing establishment, the staffs, both of the Army and of the Administration, were to be clipped, while the Native Forces were to be reduced in the provinces where, with the advance of civilization and in a peace which has now lasted for three-quarters of a century, the Government is able to dispense with a large part of its Army.

"This opinion, with regard to Madras, is not only that of this Government, but we learnt from the Governor of Madras in Council two years ago, that he considered his military establishment too large: this opinion was uttered emphatically, and, to the best of my recollection, without solicitation from elsewhere.

"My testimony may not be worth much, but when appealed to for an opinion as Commander-in-Chief of the Bombay Army about the year 1864, I admitted that that Army was capable of reduction with regard to the wants of the peaceful provinces it guards. At the same time some regiments were employed in guarding jails, that is, performing the duty of policemen:

"I now understand that Madras is willing to do something of the same sort with her soldiers. But I believe I am not wrong when I assert that the cost of a military sepoy is actually more than double that of a police sepoy, this difference of cost being produced by the larger number of officers connected with the former, the more expensive armament and clothing and so on.

"Now it is clear that, if the expensive military sepoys are not wanted for other purposes, it is an extravagance to keep them up for civil ones, which would be as well, some say better, performed by the inexpensive policeman.

"I have often heard it asserted,—I am not sure that I have not myself made use of the argument in former times—that it may be well to keep up a military reserve beyond immediate actual wants, and to employ this reserve on such duties. I am led to believe, now, that such an argument is hardly defensible, the more especially since our modern means of movement cause the State to hold at its disposal a military reserve not previously existing, namely, in the power for rapid combination and concentration of the Forces from almost any part of the Empire.

"I believe that my hon'ble friend the Lieutenant Governor of Bengal has strong opinions on this matter, it being one of his recommendations, for an important part of the territory subject to him, to substitute military policemen for soldiers, on the ground of economy first, and, with regard to the special duties required, of efficiency also. I am not prepared to say that I entirely go along with my hon'ble friend, as I cannot hide from myself that the effect of military demonstration on the mind of a barbarous and uncivilized people is not without considerable political advantages, even if the soldiers be kept in a state of idleness as compared with the activity of policemen in discharge of duties. I am not prepared to admit that any duties of a military nature, which may be done by military policemen, may not be at least equally well done by the regimental sepoys. If there be failing with the latter, either as regards efficiency or mobility, this failing of efficiency or mobility is not really to be attributed to a particular organization, but to those who direct forces, whatever may be their denominations. But this I do say, that that opinion is right in principle which asserts that a given duty, if it can be done by economical means, should be so performed, and that we therefore should shut out from our consideration all proposals having in view more expensive means of action for the avowed purpose of cherishing ancient establishments.

"In this Presidency it may be said, without fear of contradiction, that the Government of India has long been superior to any such considerations, the Army having been treated and considered solely with a view to its public uses only.

"Accordingly, when reviewing the Forces last year, when considering our wide frontiers, and the extremely dangerous character of a large portion of them, the necessity of occasional concentration for the prosecution of a campaign almost at a moment's notice, we came to the conclusion that we must maintain the number of British and Native Troops in Upper India as an absolute military and political necessity, although we might do something, by the reduction of some corps with their officers and the manipulation of the remainder, towards the reduction of expense, and also to show that the Bengal Army would not escape its share of the general discomfort following on a large measure of reduction.

"I would ask the attention of the Council to consider the enormous area guarded by the Bengal Army, stretching as it does from Peshâwar in the West, over twenty-five degrees of longitude, to Debrugarh in the East; I would invite you to consider the object of an Army posted in the Panjâb, which not only looks to the peace of the frontiers and of the province, but is the guarantee of our foreign relations. I would ask you to recollect the duty of the Government of India as a paramount power to insist on peace being kept by the numerous feudatories subject to her.

"In a speech which I lately read, of Mr. Grant Duff's, I observed that he could find no proper illustration of the areas and distances in India but the map of the whole of Europe excluding Russia,—in point of fact the hon'ble gentleman was referring to arrangements and distances in this our Presidency of Bengal only. In an Empire of this magnitude it is interesting occasionally to scan the forces holding the possession. I think their slender numbers, when they come to be investigated, may fairly excite the surprise of the civilized world, if those numbers are compared with the duties performed, and the absolute security provided for the vast provinces and populations and outlying dependencies of this Empire. I invite the attention of the Council to a return I hold in my hand furnished by the Military Department at my request.

Return of Nominal Establishment and of actual Strength of Troops in India, 29th March 1870 according to latest Returns received in Military Department.

	Nominal establishment	Actual Strength.
British Forces in India	61,634	55,333
Bengal Native Army (including Panjáb Frontier Force) .	63,131	60,900
Madras Native Army (including 4,729 serving in Bengal, China and Straits)	32,431	31,202
Bombay Native Army	26,880	25,178
	184,076	172,613

NOTE.—The establishment of British Troops has been recently altered to some extent, but details of future establishment are not exactly known

The establishments given do not include 7,086 officers, including those in civil and miscellaneous employments

The nominal establishment includes certain Corps under the Foreign Department in Rajputána They are not included in the column of "Actual Strength of Troops under this Department"

Owing to the overland relief being in progress the actual strength of British Troops is lower than it would otherwise be.

"Well, my Lord, from these slender numbers we proposed to reduce ten thousand Native troops on the understanding that they would be taken from the Provinces where they are admittedly not wanted, but that military strength is to be carefully preserved where it is wanted.

"As a Commander-in-Chief about to hand over my not inconsiderable responsibilities to a successor, I can only say that I dare not recommend a reduction on any other principle. If we reduce our troops to a minimum, we must have them in places where they are really wanted and where they are quickly available, and we must pay much attention to the military character of the tribe or population from which our Native regiments are recruited.

"I am sorry to say we have not as yet been able to come to an agreement with the Secretary of State on this matter. I venture to think his advisers have not appreciated the value of the principle I have stated with regard to the slender general figure of our modern military resources. Agreed as we are, both in England and in India, that a reduction is proper, I trust this Government will be permitted to give effect to it in that manner alone which appears to be safe and sound. Otherwise there should be no reduction.

"Financially, this becomes the more important when it is recollected that the troops in Southern India are much more expensive than those in this Presidency.

"So far for the general question of distribution and reduction of troops.

"With reference to our European Forces, according to the figures I have already read, it must I think be clear to the meanest apprehension that we have reached the absolute minimum. I believe that, by means of certain changes which have been laid before the Home Government, these Forces may be actually rendered more efficient than they now are, while their cost is considerably reduced. Our proposals are before Her Majesty's Government, who to a certain extent have moved in the directions indicated by us with regard to the Infantry, although, as respects the Cavalry and Artillery, we are as yet unacquainted with the conclusions formed at home. The number of infantry-corps has been reduced, but the number of infantry-soldiers remains as heretofore.

"My Lord, I have been in the most important situations in these armies for more than twelve years. I have been an acquiescing party to the successive reductions in European strength which began with the cessation of hostilities in 1859, because, till the last reduction of four years ago, I held the opinion that we were still maintaining war-establishments. But I am convinced that we should not go further, and that to attempt a diminution of the existing British Forces in India is an expedient fraught with so much danger as not to be thought of.

"Although it is a mistake to say, as it is so often alleged, that the British Empire in India is merely one of the sword, and although we recollect that this Empire really rests on a policy founded on justice and the rugged British character, it is nevertheless true that a certain armed British demonstration is absolutely necessary for dominion over public opinion, and the insurance of the institutions to which we trust for the civilization of the country. It is, to your administration, what iron is to the blood—on the due proportion of the iron, vital power depends.

"I came out to India in 1857, to assist in putting out the terrible conflagration which had been caused by the forgetfulness of this simple truth on the part of the authorities responsible for India in this country and at home. I pray to God that such blindness may not overcome, again, those who have to answer for the destinies of this magnificent country!

"My Lord, there are many things on which I could willingly descant with reference to the systems, and the recourse to more economical arrangements, which might be pursued in these Armies. In those with which I am acquainted, namely, of Bengal and Bombay, I believe the existing system is working fairly well. So far as I am able to judge, the discontent which was rife some years ago has generally died out. For Madras I cannot answer, as I have no personal knowledge of the Army of that Presidency. But the changes which have been stereotyped with us, and have now lasted for many years, are comparatively new to Madras. For such things, the action of Time is at least as much required as any artificial resource. This, as yet, Madras has not enjoyed.

"Your Excellency has had an opportunity of seeing the troops of this Presidency on two great occasions, and also, I believe, in Bombay; and I will leave it to you to say whether in appearance they can be surpassed by troops of other countries. During the last few years, there have been the campaigns of Bhután, Abyssinia and Hazára; and it is but right to say, for the troops, that their zeal, readiness, mobility and forwardness in the field were not to be surpassed. There is one thing, of which in the interest of true economy and of political safety, I would warn the Government, and, perhaps, I may say the officers of the Army. I would warn them against the vice which is apt to creep insidiously over all Armies in times of peace, namely, the tendency to press for more comforts, more material advantages, in short, for things which cause the soldier to forget the object of his enlistment, and to believe that he is to be preferred to the public economy.

"In a country of caste like India, unless the officers who deal with the Native troops watch themselves, the influences of caste are apt sometimes to affect even the British officers, and to cause them occasionally to think caste-interests of greater importance than military ones. This mischief was actually seen in the old Bengal Army. It does not, I believe, now exist, at all events in this Army of Bengal; but I must repeat, it requires never-ceasing vigilance to prevent the vicious tendency from cropping out.

"In the British Army we have not this to contend against; but we have something else which also requires the utmost watchfulness. I allude to what may be called the exaggeration of sanitation-theories, which, while exhibiting at times the utmost difference of opinion among the authorities proffering their advice, would, not seldom, if listened to in their integrity, deprive the British soldier of his usefulness altogether for the purposes on account of which he is brought to India. Whilst warning against the exaggeration, I gladly admit

the facts of the great improvements of late years for the health of the British soldier, and I believe I have not been slow to forward them during my long term of office in Bombay and this Presidency.

"I have had the great satisfaction of urging forward the two new Hill-stations of Chakráta and Ránikhet, the former of which is already occupied by a British Regiment, and the latter will receive some 500 men this year. I think this policy may be still further extended, and that we may safely create Hill-stations for three more British Regiments, in addition to those already occupied. Then, in addition to our sanitary depots, we should never have less than seven or eight entire Corps on the mountains in this Presidency; that is to say, a fourth of the Infantry Regiments quartered in the Himalaya as entire Corps, while very large detachments from the remaining Infantry, the Cavalry and Artillery, would fill the depots. My recommendations to this effect have been before the Government for some time.

"As a matter of economy as well as of humanity to our countrymen, this policy should be extended to the utmost limit consistent with political security.

"In the course of my remarks, I have adverted to the new military strength accorded to us in these days, as compared with former times, in the power for immediate combination and concentration. This reflection leads us at once to another point, namely that, in the combination of the Military Departments of the several Presidencies into one War Department under the Government of India, with a corresponding change in the system of Command-in-chief, may be found a measure giving at once improvement in economy and increase of strength. There should be but one War Department, which would at once involve the consequence of one Ordnance Department; in short, the concentration of the Army in the largest sense in the hand of the Government of India. This need by no means interfere with the local character of the Native Forces of the other Presidencies, a character which, I believe, a sound policy bids us carefully to maintain.

"It has always appeared to me that, in this country, many things are centralized which ought to be local and dependent on the Local Governments; whereas those establishments are kept separate, and, as it were, almost distinct from the immediate control of the Supreme Government, which, from the nature of things, especially belong to it. Such is the case with military administration. We do not see the Federal States of America maintain distinct military organisations for the payment of which Congress is responsible,

although, in other matters, the provincial Governments of the States exercise a very large power.

"There is no reason for separate military administration in Madras or Bombay, which would not equally apply to the several Governments making up this Presidency. So long as the separate system lasts, I am hopeless of real economy or of breaking down the influences and jealousies which meet your Excellency at every turn when economical schemes issue from this Council. I need hardly remind this Council that I ventured to utter these opinions very many years ago, when they might have been supposed to be contrary to my personal interests. A long and practical experience of government and command, first in Bombay, and afterwards in association with the Governor General, have only tended to convince me that these opinions are right and should be carried into execution. Whenever reforms in such a direction take place, I may say, with regard to the office I am about to lay down, that some modification is necessary.

As your Excellency is aware, I received the instructions of the Secretary of State for India, when I was appointed to this command, to be as much with Government as possible, regard being had to my essential military duties. That instruction was enforced by the orders of His Royal Highness the Field Marshal Commanding in Chief. Well, I have tried to fulfil those instructions, and have been more assiduous in my seat in Council than, I believe, the great majority of my predecessors. Not sparing exertion and activity, I have sought to carry out my duties of inspection in hurried Spring and Autumn tours. I believe that, in consequence, the troops have been visited by Head-quarters quite as much as in former commands. But the strain imposed in the attempt to carry out the instructions with regard to the two sets of duties has been often such as almost to exceed the strength of any man, while my visits to the several stations and my residence among the troops have been shorter than I could have wished; this not unnaturally caused my mode of exercising command to be misconstrued in many quarters. I think, then, that, in any revision of the establishments with regard to economy or other considerations that may be entertained hereafter, the points I have mentioned, although personal to myself, are not without significance, and should be duly weighed. How the necessities of the administration, on account of what is now done by three Military Departments, and how the military command should be dealt with in the three Presidencies, in order to overcome the inconvenience and the want of economy now experienced, I have more than once during the last ten years suggested to Government. It is sufficient to say that we have, in my opinion, the right model in France, where the Head of the Army is the executive War Minister, while the Military

Command of the Corps d'Armée is conducted by Lieutenant-generals, whatever their titular military rank.

"There is one more point to which I would invite the attention of the Council, that being the tendency to growth of non-effective establishments. I need not advert to the statements of General Hanyngton and Colonel Broome, beyond uttering the remark that, while these distinguished authorities differ in detail, they are agreed in presenting a picture of future liability which is positively alarming. In short, we are threatened with the serious danger of all our economies in India, in the combative Forces being eventually greatly more than swallowed up in the growth of the non-effective expenditure. Under such circumstances, a further greater danger might be forced on by public outcry, involving perilous reductions to meet non-effective charges.

'It has been my duty, more than once, to submit my views as to how this difficulty may be fairly and properly encountered while there is yet time. It would be premature to dwell on the suggestions of one member of this Government on this particular subject, which I presume must be sooner or later dealt with in an authoritative manner, and may be said to be still *sub judice*, although this Government and the Secretary of State have not as yet come to an agreement on the subject. But I need not suggest to the Council that the subject is one of great and of increasing importance. My Hon'ble friend in charge of the finances cannot press his attention too strongly to it.

"In conclusion, my Lord, as one who has been intimately associated with the Armies of India for more than a quarter of a century, and, for the latter half of that period, has been in places of the greatest responsibility, who has watched the causes and progress of change through this long period, and has been in general one of the chief executive authorities for carrying out the reforms impressed on us from time to time by Her Majesty's Government, I may, at this last moment of my discharge of duty, declare my confidence in the military arrangements sanctioned by your Excellency in Council, and my belief that the Army does justice to the care bestowed on it by the Government.

His Excellency THE PRESIDENT—"I am anxious on this occasion to deviate somewhat from the usual course, and to make to my colleagues in this Council a statement with regard to the proceedings of the past and ensuing year of the Department of Public Works, of which I am the Member of Council in charge.

"I believe that great advantage would be derived if this practice were more generally adopted, and if Members of Council in charge of the great expending departments of this Government would take advantage of the production of the

Budget to lay before their colleagues a short abstract of the mode in which these great sums of money have been and are to be disposed of, in order to give to the public an opportunity of knowing in detail how these sums are likely to be expended.

"I think, therefore, that in adopting this course, I am adopting a course which is now pursued in almost every Government in the world, namely, that at certain periods of the year, even under the most absolute rule, ministers do, on their own responsibility, make statements on the position of the departments over which they preside.

"Should the course that I now propose to take with regard to Public Works in India receive the general approval of the public, I propose to extend that practice to another year, and endeavour to induce some of my colleagues to make similar statements.

"No other opportunity is likely to occur—I regret that the present hour is so late, but still I am anxious that at the earliest possible moment the public should be placed in possession of those important facts to which I now invite the consideration of my colleagues.

Many of these facts which I now bring forward and state to the Council would, in ordinary course, hereafter be laid before the public. But we are all aware that when facts such as these are merely stated in various departmental reports, they are necessarily stated at great length and in a somewhat disjointed form, and my belief is, that these matters do not receive from the Indian public that fair attention which their importance deserves, and I think the Government would obtain much advantage from wider criticism and greater discussion of these subjects by those who take an interest in public affairs.

With this preface, I propose to make as brief a statement as I can as to the expenditure of the Public Works Department during the past and ensuing years.

The total expenditure on public works in England and India for 1869-70 will be about £8,000,000.

I give the figures as nearly as possible in round numbers.

This great sum will be divided into two heads, *viz.*, Ordinary and Extraordinary expenditure; the Ordinary expenditure representing that which we expect to be able to pay out of the revenues of India, and the Extraordinary, that which is to be defrayed by loan.

Under the head of Ordinary we shall have spent in the year which has just come to a close a sum of something like £5,300,000.

Under the head of Extraordinary we shall have spent the sum of £2,600,000.

Of the £5,300,000 which I have just mentioned under the head of Ordinary, £5,000,000, as nearly as possible, will be spent on public works. The remainder will be made up of smaller items, such as State railways, official expenses connected with guaranteed railways, and loss by exchange.

In the Extraordinary expenditure for the past year, the great item will be that of two millions of money spent on Irrigation works; a small sum has also been taken for the commencement of State railways.

The principal items of expenditure in India under the head of Ordinary will be—first, for Military works nearly a million and a half sterling, of which the original works will take about £1,200,000 and repairs £227,900.

£478,000 will be spent on Agricultural works, of which £192,000 will be taken for original works and £279,000 for repairs.

£680,000 will be spent on Civil buildings, of which the original works will cost £562,000 and the repairs £122,000.

We then come to the important item for communications, which really means the construction and repairs of ordinary roads. In the year that is just closed we shall have spent under this head, as nearly as possible, £1,000,000—£600,000 of which will be spent on original works and £4,900,000 in repairs.

A smaller item of £58,000 follows for miscellaneous and public improvements, and then there will be the great item of £1,000,000 for cost of establishment, of which £70,000 will go for tools and plant.

These will form the principal items of the Ordinary expenditure of the Government of India in the Public Works Department for the year just closed.

Of the million and a half spent in India on Extraordinary works in 1869-70—

Irrigation Works will take about. .		.	£ 950,000
State Railways about	...	...	„ 144,000
The Bombay Special Fund	...	..	„ 350,000

and the remainder will be made up of smaller items.

It will be interesting to the public to know how this large expenditure of 6½ millions was distributed among the various Presidencies.

Madras will have received for its public works about	£	835,000
Bombay	„	1,450,000
Bengal	„	1,360,000
N. W. Provinces	„	865,000
Panjáb	„	866,000
Central Provinces	„	328,000

The remainder will be distributed between British Burma, Oudh, Hyderabad, Rájputána, Central India, Coorg and Port Blair.

In the middle of the year 1869-70, as the Council are aware, upon investigation and enquiry made at Simla into our financial position, the absolute necessity of an immediate reduction in the Public Works Department became apparent to all the Members of the Government. After the fullest and most careful consideration, we came to the conclusion that unless a large reduction was made in this item of expenditure, it would be impossible to look to financial safety in the year. We, therefore, with very great reluctance made up our minds to a reduction of the public works expenditure of the Government of India to an amount of nearly £800,000, the actual sum being £792,500.

Well, the necessity of the case was speedily recognized in a manner that was almost surprising, and with scarcely a single exception, the local Governments so far seconded our efforts that the result has been obtained, and it appears that a saving will have been effected in the Public Works Department's Ordinary expenditure during the year even to a greater extent than was suggested.

There are only two cases in which local Governments will have exceeded their grant. Madras will have exceeded its grant by the small sum of £3,000, while according to the latest accounts Bombay will have spent £29,700 more than the reduced grant.

This is the only case where a local Government has been unable to carry out to the full the orders and wishes of the Government of India.

I find that Bengal will spend less than the reduced grant by £2,400, North-West Provinces £500 less, Panjáb £82,700 less, Central Provinces £14,300 less, British Burma £30,900 less, while the smaller Governments will show a proportionate reduction. The result will be that, under this head of

public works expenditure, the reductions that were ordered in so unusual a way will be entirely and successfully carried out.

When we think of the very great sacrifice that the local Governments have been called upon to make, when we know the great interest they take, and justly take, in all these works, I must say that the Government of India are deeply indebted to those Governments for the manner in which they have adopted our recommendations, and for the way in which, at very great sacrifice, they have been able to carry out our wishes.

Well, so much for expenditure in the Public Works Department in the year that is just passed.

I now propose to lay before the Council a similar statement with regard to the expenditure of the year upon which we have entered.

I must, however, remind the Council that both as regards the past and the future years these statements are to a certain extent approximate. It is impossible, speaking on the second day of the financial year, that the fullest information with regard to the past can be at the disposal of the Government of India, and, as every one knows, with regard to the future the statement I am about to make is one entirely of estimate. All I can say is that in respect to large expenditure much power rests in the hands of the local Governments, if they choose to exert it, which I am sure they will, to keep the expenditure within the estimate, and in some instances to realize even more than the suggested saving.

The expenditure, then, for the ensuing year in the Public Works Department will be placed at about £7,475,500.

Of this £6,900,000 will be expended in India, and £500,000 in England.

Under the head of Ordinary, £4,300,000 will be expended, and under the head of Extraordinary £3,100,000.

Of Ordinary, the large sum of £3,900,000, or nearly £4,000,000, will be spent entirely on public works; the rest will be made up of the smaller items, such as official expenses connected with guaranteed railways, Calcutta and South-Eastern Railway, and loss by exchange.

In Extraordinary, that is, the loan-works for the ensuing year, the two great items will be £1,730,000 for irrigation, and £1,220,000 for State railways. This head of expenditure appears for the first time in any magnitude in the public accounts. The remaining item is a smaller one for Port-trust works at Bombay.

Well, then, of the £4,300,000 to be devoted to Ordinary works, the Military works will take about £1,120,000; of that £900,000 will be expended on new works, and £200,000 on repairs.

The Ordinary agricultural works will take £490,000, the greater part of which will be spent on original works, repairs, with a small outlay on guaranteed irrigation works.

£518,000 will be spent on Civil buildings, of which the new works will demand £390,000, and the repairs £120,000.

£840,000 will be spent on communications, that is, on roads. The expenditure on roads and repairs will be divided very nearly in equal parts, as the original works will come to £400,000, and the repairs £430,000.

There will be a small sum of £40,000 spent on miscellaneous public improvements.

The cost of establishment which directs the whole will stand at something less than it did last year, being £900,000, and £60,000 for tools and plant.

As I said before, of the £3,100,000 which will be spent on Extraordinary works—

	£
Irrigation will take	1,700,000
Original works	1,200,000
Establishment	300,000
Tools and Plant	180,000
State railways	1,200,000
And Port-trust works	150,000

This gross sum will be as nearly as possible distributed to the different local Governments in the following proportion : —

£	
817,000	to Madras,
1,370,000	to Bombay,
1,212,000	to Bengal,
1,137,000	to N. W. Provinces,
1,800,000	to the Panjáb, and
300,000	to the Central Provinces.

The reason for the Panjáb figuring for such a large sum this year is, that the great State railway from Lahore to Pesháwar is to be commenced this year in that province.

"The remainder of this large sum will be divided between British Burma, Oudh, Hyderabad, Rájputána, Central India, Coorg, and Port Blair.

"In round numbers, then, the expenditure on public works in 1869-70 will have been £8,000,000; in 1870-71 £7,500,000, or 7½ millions. But a heavy payment of an unusual character took place in 1869-70. Of the £1,400,000 which was spent in England in 1869-70, £1,040,000 was paid to the shareholders of the East India Irrigation and Canal Company for their property, which is better known under the name of the 'Orissa and Soane Irrigation Company.'

"If, therefore, this heavy item be left out, it will bring down the real expenditure in 1869-70 to £6,900,000.

"From this point of view, therefore, the total estimated expenditure for 1870-71, namely, £1,400,000, is in reality half a million more than the corresponding expenditure for the past year; so that if we exclude from the expenditure of the year that is just closed the payment for the property of the Orissa Company, we hope during the ensuing year to expend on works of public utility a much larger sum than we spent during the past year.

"But I must remind the Council that those great sums of 8 millions in 1869-70 and 7½ millions in 1870-71 by no means represent the whole of the expenditure on works of public utility, and for which the Government is responsible in India.

"We shall pay in 1869-70 £1,570,000 in interest and nett charge on account of railways. The Railway Companies under Government guarantee will spend in the same year upwards of four millions on construction; so that in reality the gross expenditure on works of public utility in India during the past year, and the necessary expenses, that is, payment of interest on loans expended for similar objects, will amount to the enormous sum of nearly fourteen millions.

"In 1870-71, that is, in the ensuing year, in addition to the 7½ millions before referred to, we shall spend as our nett charge on account of railway interest £1,600,000, and the Railway Companies under Government guarantee propose in the same year to spend upwards of £5,100,000 on construction, making in all a total for the present year of upwards of £14,288,000.

"I wish the Council particularly to note these facts, because I do not believe that it is generally known that there is such an enormous expenditure going on in India for works of public utility.

"If we put these two great sums together, we shall have expended in the two years ending 31st March 1871, either from ordinary revenue, either from

loan for interest, or through the agency of the Railway Companies under Government guarantee, the enormous sum of 28½ millions upon works of public utility in India, and their cognate expenses.

"This sum that we shall spend in two years is considerably more than the annual revenue either of Spain, of Italy, of North Germany, and three times as much as that of Holland.

"Now as to the proportion that these great sums bear to our own revenues. I find that in a calculation which has been kindly made for me by the Secretary of the Financial Department, the amount of nett available revenue of the Government of India for the year 1869-70 can only be counted at £28,900,000. When I say available revenue, I mean those sums placed at the disposal of the Government of India the distribution of which is within their power, that is to say, that in making this calculation I deduct all imperative charges over which we have no control, such as costs of collection, charges, payments of interests, and charges for pensions, any payments made under treaty engagements, &c.

"If after making these deductions we take the nett available revenue of India for this year, we find that it only amounts to about £28,000,000. We shall have spent out of that sum in the year just closed, out of the revenue of the year, as I stated before, a sum of £4,800,000 on public works ordinary, which is nearly 17 per cent. on our nett available revenue. In the year 1870-71 we expect that our nett available revenue will be £28,090,191, and that we shall spend on public works ordinary £3,800,000, which will be nearly 14 per cent. on those resources over which the Government may be said to possess control.

"To look at it in another way. I find that the whole expenditure on public works—that is, the nett expenditure (deducting recoveries)—amounts to £13,800,000 for this year, so that comparing that with our nett available revenue, we shall have spent on works of public utility during the past ye[illegible]g like 47 per cent. The percentage will be increased during the present year, so that in reality we expect to spend within the ensuing year on works of public utility in India a sum nearly equal to half of our entire available revenue, and I believe this is an effort in the direction of public improvement that has hardly ever been attempted by any other nation in the world.

"But I wish now to explain to the Council the different proceedings which are to be undertaken during the ensuing year by the Government of India under various heads in the Public Works Department, and for this purpose I

shall place what I have to say under the heads of Military works, Civil works, Agricultural works, Irrigation, &c., and Railways.

"Under the head of Military works, the total sum spent in 1870-71 will be £913,000 for original new works, and £214,000 for repairs, making a grand total of £1,127,400.

"The sums for new works may be classed under the following main heads, *viz.*—

	£
Accommodation for troops generally	654,305
Ordnance factories	147,100
Gas-works	5,500
Water-supply	21,495
Works of defence	61,000
Roads to important hill stations	19,000
For Port Blair	4,650
Making in all a sum of	£913,051

"Of the total sum assigned for 1870-71 under the heading of 'accommodation of troops,' *viz.*, £654,305, the bulk has been devoted towards carrying on the great scheme of barrack accommodation for the British soldiers that has now been in progress for the last five years.

"It has been necessary to sub-divide the allotment over nearly all the stations at which European troops are quartered, in view to provide for the urgent requirements at each station in the way of shelter; but it has been an object to concentrate the expenditure as much as possible, on the completion of barracks and hospitals now in progress, rather than on the commencement of new buildings, for by so doing, it will be possible to complete a very considerable amount of shelter at each station during the year. The largest assignments have been made for the most unhealthy stations, or for stations at which the accommodation is most backward, thus

Saugor	29,000
Morar and Gwalior Fortress	25,000
Mhow	19,000
Nusseerabad	19,000
Belgaum	22,000
Kurrachee	20,000
Peshawur	15,000
Ahmednugger	17,000
Jubbulpore	15,000
Fyzabad	20,000

"At other stations, where the call for accommodation is not so urgent, the allotments are somewhat smaller than the foregoing, thus—

	£
Ambála	11,800
Ráwal Pindí	7,500
Seetapore	9,000
Neemuch	14,000
Nowgong	10,000
Bellary	5,000
St. Thomas' Mount	5,000
Kirkee	10,000

"The allotment for Barrackpore, £7,700, will complete the barracks for both the single and married men of the two companies of artillery at that station.

"The allotment of £8,000 for Allahabad will also complete the accommodation of the regiment of infantry and battery of artillery at that station; so also will the allotment of £5,000 complete the buildings for the single and married men of the regiment of infantry at Cawnpore.

"Liberal provision for extending the accommodation at hill stations has also been made. A sum of £7,500 has been set apart for completing the temporary accommodation of the regiment of infantry at the new hill station at Chakráta.

"An allotment of £10,000 has also been made for proceeding with new barracks at the new hill station Ráni Khet, and an aggregate sum has also been allotted to the old hill stations at Dugshai, Kussowlie, Subathoo, Baloon and Murree.

"The next item for consideration is that of the ordnance factories. The most important works under this head are the Snider factories and ordnance buildings in Bengal and Bombay,—we do not yet know whether we shall be able to proceed this year with the Madras factory,—and are specified as follow:—

Snider Factory, Dum-Dum,
Ditto Kirkee,
Ditto St. Thomas' Mount, Madras,
Gun Carriage Agency buildings in Allahabad,
Powder Works, Gun Carriage buildings, and Magazine, Kirkee,
Hydraulic Lift, Graving Dock, Bombay, and we hope some progress may be made in the new Gun Foundry at Cossipore.

"Funds are provided for completing the gas-works for lighting the barracks and cantonments at Allahabad and Rawul Pindee. These works are now far advanced, and are expected shortly to be completed.

"The next item is that of the water supply. The important projects under this head are—improved water supply for the large station of Ambála, and also for Trimulgherry, Kirkee, Ulsoos Tank (Bangalore).

"With regard to defence works, the most important of these are the harbour defences of Bombay and the Rangoon pagoda and harbour defences.

"With regard to roads to hill stations, the sum allowed for this work is for opening up communications from the plains to the important hill stations of Ráni Khet and Chakráta.

"This, then, is a description of the works proposed to be undertaken during the ensuing year under the head of Military works.

"Under the head of Civil works, one of the principal grants will be made to Kurrachee Harbour. The grant for these works for 1869-70 was £26,500, which was subsequently reduced to £25,500. The grant for next year is £26,500.

"The estimates for these works aggregate about £430,000, of which it was expected that about £260,500 would be expended up to the 31st March 1870, so that at the present rate it will take many years to carry out the scheme.

"But I wish to say, with regard to these works, that we hope to place them upon a somewhat different footing, and we are already engaged in seeing whether a local trust may not be created by which advances may be made, and therefore it might be possible hereafter that a portion of this expenditure may fall under the head of Extraordinary.

"With regard to the Godavery navigation, the original grant for 1869-70 was £70,000, which was reduced to £50,500. The grant for 1870-71 is £30,500 only; all these figures being exclusive of establishments. The grant for the First Barrier Works will practically complete them, and a good deal of progress may be expected with the anicut and locks at the Second Barrier.

"The construction of the road from the Dharwar Frontier to the Port of Karwár is a very important work.

"The grant for the year 1869-70 was £13,340, and for 1870-71 it is £15,000.

"This will probably complete that line of road.

"A sum of £147,500 has been passed for improvements to the Bombay Harbour, £100,000 of this being for the Moody Bay Reclamation.

"The whole of the expenditure it is proposed to debit against the Port Trust, which, it is hoped, will soon be constituted, on arrangements for the purchase of the property of the Elphinstone Company being concluded.

"With regard to the Madras jails, the great progress made within the past two years with the new central jails in that Presidency has allowed of a considerable reduction in the grant assigned to them in 1870-71, namely, from £32,400 in 1869-70 to £9,768 in 1870-71.

"This latter sum will practically complete the principal jails.

"In Calcutta a sum of £40,000 has been assigned for the new High Court, which sum will complete it if the estimate be reliable.

"It has, however, been found necessary to leave the University and the Imperial Museum without any grant, as it is considered that it is much better to complete one work at a time than to endeavour and only partially to complete four or five.

"Amongst Civil works the reduction in the grant made in 1869-70 was distributed nearly equally between buildings and roads, so that the percentage of the reduction on the latter head was considerably smaller than on the former. The diminished expenditure on ordinary roads is, however, far more than compensated for by the increasing expenditure on Railways.

"I now come to the important item of Agricultural Grants.

"There never was a year in which the benefits of irrigation were more decidedly evidenced than in the last year. The interesting reports from the North-Western Provinces on this subject have attracted the notice of the public, and the statements which have been made are most remarkable and encouraging.

"In the unusually dry season of 1868-69 a great calamity was averted. It is stated on the authority of the Government of the North-Western Provinces and of the Canal Officers engaged there, that in that Province alone 1,425,702 acres were kept in a state of fertility which would otherwise have been unproductive.

"Colonel Brownlow and his officers exerted themselves to the utmost, and the result was that by their influence and constant energy, they persuaded the people to make use of the water principally for this purpose The result was that in those irrigated districts, there was a considerable increase in the production of the lower class of cereals, and I find that the 2,786 acres of that description of crop, which were under irrigation in 1867-68, have increased in 1868-69 to the amount of 85,281 acres.

"The returns exhibit an increase of the extent of land watered of 665,023 acres over the preceding year, 96 per cent. more than that irrigated in 1860-61, the most recent year of scarcity, and 45 per cent. greater than in 1866-67, the previous maximum of irrigation. In the Meerut Division irrigation reached the extraordinary extent of 308,161 acres, or 30 per cent. of the entire culturable area of the district, exhibiting an increase over the preceding year of 103 per cent. These facts tend completely to show the enormous value of irrigation works.

"The Ordinary grant for Agricultural works for the current year now stands at £478,279, of which £192,199 are for new works, £279,580 for repairs, and £6,500 for State outlay on guaranteed works.

"The Extraordinary grant was originally £1,650,000, but the expenditure is not likely to exceed £900,000.

"For 1870-71 the following amounts are provided:—

ORDINARY.	£
New works - - - -	169,420
Repairs - - - -	322,500
State outlay on guaranteed works -	5,380
	£497,300

EXTRAORDINARY.	£
New works - - -	1,246,400
Establishment - - -	300,700
Tools and Plant - - -	185,400
	£1,732,500
GRAND TOTAL -	£2,229,800

making thus £1,415,820 for actual construction of new works, and £322,500 for repairs.

"It will be seen that the greater part of the Ordinary grant will be devoted to 'repairs.' This arises from the necessity of maintaining in good working order the extensive systems of Irrigation works already in operation in different parts of India, particularly in Madras, Scinde, in the Panjáb and the North-Western Provinces. Also, in Bengal, a considerable sum is required for the maintenance of the numerous lines of embankments in the Orissa and other districts.

"The original works to be carried out from the Ordinary grant are numerous, but, with few exceptions, of no great magnitude individually.

"Numerous important works are in progress, and will be continued during the ensuing year from the extraordinary grants in Madras, Bombay, Bengal, North-West Provinces, and Panjáb.

"In Madras the most important work that now engages attention is the completion of the canals in the Godavery and Kistna Delta. The local Government is furnished with such sums as it requires for this object, but owing to the limited supply of labour available, the extension and enlargement of these canals to the standard ultimately required must at best be a slow and gradual operation. During the current year the sum of £52,760 was allotted for these works, but the expenditure is likely to be somewhat less. Other projects on a smaller scale, but still of considerable importance, have been in progress in the Nellore, Madras, Tanjore and Tinnevelly Districts, and several entirely new schemes are now under investigation. For the latter the allotments proposed by the local Government have been allowed to stand, but as the estimates will have to be submitted to the Secretary of State for approval, it is not likely that much, if any, progress will be made with them in the coming year.

"In Bombay estimates to the amount of £545,494 have been sanctioned as extraordinary, of which £305,898 pertain to a reservoir and canal near Poona.

"Several other large projects are under consideration, of which the most important is a line of canal from Roree on the Indus to Hyderabad, which is likely to cost upwards of two millions sterling. The estimate for this work is, it is understood, nearly ready, and, in the event of its receiving the sanction of Her Majesty's Government, will probably be commenced in the ensuing year.

"In Bengal the extensive works which had been in progress in Orissa under the management of the East India Canal Company, having been transferred to Government, have been vigorously prosecuted, and the new works on the Soane,

estimated to cost £2,100,000, have been commenced. Also a canal, which is likely to cost half a million sterling, from the Damoodah at Raneegunge to the Hooghly, has been lined out, preparatory to commencement of work on the estimates receiving approval.

"An extensive system of canals from the Gunduck, at an estimated cost of £1,384,826, for the irrigation of the Tirhoot, Sarun and Champáran Districts, and also for navigation, has been before the Government of India, but information on several important points is required before it can be recommended for approval.

"The works in progress in the North-Western Provinces comprise various additions to the Ganges Canal, and its system of distribution channels; a canal from the Jumna near Delhi to Agra, estimated at £575,000, and several smaller canals in Rohilkhand. The latter form the commencement of a proper system of irrigation and drainage of the Terai Parganas.

"A scheme for a canal from the Ganges for the irrigation of Eastern Rohilkhand, estimated to cost about £1,000,000 sterling, has actually been before Government, and will be proceeded with on the necessary authority being obtained from the Secretary of State, and estimates for canals in Rohilkhand have also been under consideration. It is further proposed to open out a new feeder to the Ganges Canal with a view to intercept the whole of the dry-weather supply of the river above Futtehgurh, and thereby to obtain the means of extending irrigation to the terminus of the Doab at Allahabad.

"In the Panjáb the improvement of the Bárí Doab Canal has been in progress. The Kussoor and Sobraon branches, which formed part of the original project, and which were suspended from want of funds several years ago, have now been re-commenced on an estimate amounting to £270,000. The Sirhind Canal, estimated to cost £2,250,000, and designed to convey the water of the Sutlej to irrigate the tract between that river and the Jumna Canal, including the lands belonging to His Highness the Mahárájá of Puttiala, has also been commenced.

"This will, I believe, be one of the most magnificent works that has ever been designed or carried out in this country, and I am happy to say that the Mahárájá has shown the greatest disposition to assist in the project.

"A general improvement of the Western Jumna Canal and the opening out of two important branches form the subject of another scheme, and a portion of the work has already been commenced.

"A project for a second canal from the Sutlej near Ferozepore, which will intercept the whole cold weather volume of the Beas, and give the means of irrigating the lower portion of the Bárí Doab, comprising an area of about 5,000 square miles, is also under investigation, and an estimate will probably be shortly before Government.

"A scheme for a system of canals from the Sardah, and which is likely to cost nearly five millions sterling, has recently been before the Government of India. The detailed estimates for this great work, which is designed to irrigate the greater part of Oude and portions of the Benares and Jounpore Districts, as well as to afford a navigable communication from the foot of the Himalaya to those places, are now being drawn out.

"If any person who takes an interest in these matters wishes to read a really able and interesting document, he might read the elaborate report of Captain Forbes, who is the best authority with regard to this scheme. We have it in our power to undertake great works in that district which will be as important as any that have ever been conducted in India. This is a slight sketch of what we are endeavouring to do for the furtherance of irrigation.

"I hope I am not detaining the Council, but I wish very briefly to refer to what has been done with regard to Railways during the ensuing year.

"The year 1870-71 will be a notable year in the Railway history of India. On the 31st December 1869, 4,264 miles of Railway were open in this country, and we expect 5,061 miles to be open on the 31st December 1870, or at all events before the close of the financial year, so that if our expectations are realized, as I believe they will be, the average number of miles opened within the year will be 801 miles.

"Of this, the Great Indian Peninsula Railway will open 238½ miles of the north-east extension and 158½ miles of the southern. The north-west extension of the Madras Railway will open 94¾ miles, and the Bellary Branch of the same line 32 miles, Khamgaon 7½ miles, Oomraotee 5, and Delhi 32½ miles. The East Indian Railway will open its Chord line of 123½ miles, and the same Company the Kurhurbaree Branch of 24½ miles. The Eastern Bengal Railway will open the Goalundo Extension of 45 miles, and the Oude and Rohilkhand Railway, Byrom Ghât, 40 miles, making, as I said before, a total of 801 miles of Railway to be opened during the present year in India.

"This is the greatest number of miles that has ever been opened in any one single year. In the year 1861, 745 miles were opened, and in 1862, 770 miles. The next largest number opened in one year was in 1864, when 446 miles were opened, but in 1868 we have only opened 80 miles of Railway. However, I hope the honour will be reserved for 1870 to witness within the year by far the greatest number of miles of Railway ever given to public use since Railway construction was first commenced in India.

"The Council are doubtless aware that a great scheme has been laid down which we propose in the matter of Railways, as far as possible, to adhere to, and that is the scheme for the construction of about 15,000 miles of Railway. Of this 4,000 miles are already opened, 1,000 are in progress, and 900 are about to be commenced. We are actually at this moment endeavouring to do something more or less on fifteen different lines of new Railways. I should like, therefore, to mention very briefly to the Council what the principal of these undertakings are.

"From Delhi and Agra it is proposed to make a Railway to the Sámbhar Lake, which will, we believe, confer enormous advantages on the people of those districts by carrying corn and grain for their consumption, and bringing back return freights of salt and other productions of the district. Part of this system will also pass through the salt district of Sultánpúr near Delhi. I am happy to say that the surveys of the Agra and Delhi Districts of these lines are very far advanced, and we have every reason to hope that, on the Delhi section, work will be almost immediately commenced. The estimates for the whole undertaking will be furnished during the ensuing year, and there is no reason why the actual work of this important line both in the Agra and Delhi divisions should not be commenced during the ensuing cold weather.

"On the Panjáb State Railway, very considerable progress is being made. The whole of the line has been surveyed between Jhelum and Lahore. The designs for the three great bridges over the Rávi, Chenáb and Jhelum are in progress, and we hope very soon to send home to the Home Government an estimate of, and the necessary orders for, the iron necessary for the construction of these great bridges.

"Notwithstanding the great expenditure which we shall be obliged to make upon these bridges, we believe that the estimates fully justify us in stating that the whole of that line from Lahore to Jhelum ought to be con-

structed at a cost of something like £11,500 a mile. The surveys through the South Panjáb for the Indus Valley line have been already commenced, and Major Macleod Innes and a party of officers have been engaged during the cold weather in the surveys of that important line in the direction of Sukkur. An Engineer was sent out from England to survey a most important line of Railway between Karwár and the cotton-producing districts of the Southern Mahratta country. Unfortunately, this gentleman arrived too late to make a satisfactory survey. It has therefore been necessary, before the location was finally determined on, to cause a further investigation of the district to take place, but I am in great hopes that, before very long, the Government will be in a position to decide as to the exact direction the line ought to take. I must say, however, that it is likely to be an expensive line.

"In the north of the Bombay Presidency, considerable Railway extension has been sanctioned.

"The Bombay and Baroda Railway, the length of which is about 73 miles, is already in course of progress, and the construction of the line to Verungaum and Wudwan will be commenced as soon as the estimates are sanctioned.

"Madras also shares very largely in Railway extension.

"The Tramway Company's little line to Conjeveram, of which 19 miles will be re-laid on the standard gauge, is about to be extended 84 miles to Cuddalore. It will be re-named the 'Carnatic Railway,' and in respect to guarantee will be placed in the same position as the other Railways in India.

"It is hoped that a branch of this line will be made to Pondicherry, and the French Government have already expressed their desire to assist in the undertaking.

"Another line, 210 miles in length, from the present line to Tuticorin, is about to be constructed by the Great Southern of India Company. The surveys have been already undertaken, and it is hoped before long that the works will be commenced.

"In Burma surveys have been made from Rangoon to Prome, a distance of 168 miles.

'Investigations have been authorized, and from a communication received from the Chief Commissioner, it is hoped that advantage will be taken of converting the existing road into a line of Railway.

"In Bengal surveys have been authorized under direct Government agency for determining the best lines; but it is distinctly understood that the Government's having authorized these surveys, does not settle the question that they are to be constructed by direct Government agency.

"Much progress has yet to be made in the extension of the Eastern Bengal Railway to Goalunda.

"The delay in the construction of this work has been mainly due to the unfortunate accident at the Gorai Bridge.

"Further north, beyond the Ganges, the Oudh and Rohilkhand Company are pushing on their works.

"The Cawnpore Bridge is rapidly approaching completion, and we hope that before very long the Ganges will be bridged for the first time.

"The designs for the erection of another great bridge across the Ganges at Rájghât have been approved, and the earth-works for nearly the whole of the system of the Oudh and Rohilkhand Railway have been marked out.

"We believe that this system of lines under the able direction of the officers of the Company is likely to be made more cheaply and with greater economy than any Railway that has hitherto been made under guarantee in India, and General Beadle informed me the other day that, including the large bridges over the Ganges, he hoped that the average cost of the Oudh and Rohilkhand Railway would not exceed £11,000 a mile.

"A portion of this system includes the line from Moradabad to Ramnagar and the foot of the Himalayas and running near the Kumaon Iron Works, about 45 miles in length.

"In the Central Provinces orders have been lately issued by the Government for the survey of the line which will convey coal and iron lately discovered in those districts, and we hope during the ensuing year, the work will be actually commenced. The surveys east of the Wurdah have already been completed; we hope before a month or six weeks are over, we shall be in a position to decide with regard to the Oomraottee Branch in the Berars.

"But the two most important of the year in Railway are those connected with the Hyderabad State Railway and the proposed Railway to Indore.

"I am sure the public have heard with the greatest satisfaction that two Native Governments have proposed to come forward and subscribe a million of money each for Railway construction in their respective States.

"Sir Salar Jung has already made financial arrangements to construct a branch line from Goolburga to Hyderabad entirely at the expense of the Hyderabad State, and though it will really be under British management and constructed by British Engineers in a way similar to State-railways, it will be essentially the property of the Nizam's Government, and before three years and a half are over, we may hope that the Hyderabad State will be in possession of a Railway of its own.

"The Mahárájá Holkar has also made a proposition of a different kind, but which will have precisely the same result. He has agreed to lend the Government at 4½ per cent. a million of money to construct a line which will meet the Great Indian Peninsula system somewhere near Khundwah.

"The financial arrangements in this matter have been perfectly satisfactory, and His Highness has proposed to place at the disposal of the Government of India more than half the amount in the first two years, the remainder being paid by instalments spread over a greater length of time.

"There is therefore no reason to doubt that, before very long, we shall see in India two great Railways in process of construction entirely by capital supplied by Native States, one of which has determined to do the whole thing itself, and the other to place a sufficient sum in the hands of the Government to carry out the enterprise.

"In many ways the Government are endeavouring to provide materials for the construction of those works which they are about to undertake, with, if possible, much greater expedition and less waste of time than has hitherto attended their action in this respect.

"Attention has also been given to the provision of fuel; various investigations are being made in different directions with regard to coal and petroleum, which has been long known to exist in small quantities in the Panjáb and other parts of India.

"We hope that the Nerbudda Valley and also the Chanda District will before long produce a large supply of coal: we have heard of the existence of a large quantity of coal on the Godavery, and we have every prospect that during the ensuing year, or eighteen months, we shall be in a position to say

that there is in this country a supply of coal sufficient to work a very large portion of the Railways at present in existence as well as those about to be constructed.

"Of course some districts will always be so remote that we cannot venture to hope that they will derive any very material benefit from this increase in the supply of coal, and for this reason efforts are about to be made in these cases to increase the supply of wood-fuel as much as possible.

"It is very late, and had I more time I could have brought to your notice many other interesting facts with regard to this important matter; but I am satisfied that, even brief and imperfect as is the statement I have now made, it will attract some attention generally to this subject; and I can truly say that there is nothing the Government of India value more than public support in these gigantic undertakings, which have no other object but the general good of the people of this vast empire."

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE having then applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then introduced the Bill, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

CUSTOMS DUTIES' BILL.

The Hon'ble SIR RICHARD TEMPLE then moved for leave to introduce a Bill to amend the law relating to Customs Duties.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then introduced the Bill, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for imposing duties on Income and Profits arising from Offices, Property, Professions and Trades—The Hon'ble Messrs. Stephen, Forbes, Cowie, Chapman, Bullen Smith, Cockerell and the Mover.

On the Bill to amend the law relating to Customs' Duties—The Hon'ble Messrs. Stephen, Forbes, Cowie, Chapman, Bullen Smith and the Mover.

The Council adjourned to the 5th April 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 2nd April 1870.

and India during the Year 1868-69

PAYMENTS.	England.	India.	TOTAL
	£	£	£
10. Ordinary expenditure ...	11,946,604	42,244,243	54,190,847
10A. Extraordinary expenditure .. .	352,655	1,017,958	1,370,613
11. Deposits repaid and advances recoverable, &c.	...	15,363,614	15,363,614
12. Local remittances	...	366,336	366,336
13. Interprovincial and interdepartmental transactions	...	15,758,464	15,758,464
14. Remittance account	942,100	1,140,644	2,082,744
14A. Abyssinian expedition	825,248	7,090,347	7,915,595
15. Bills of exchange		4,435,806	4,435,806
16. Railway capital	2,301,170	2,564,323	4,865,493
17. Debt paid	502,500	1,279,614	1,782,114
18. Closing balance	3,025,981	10,175,804	13,201,785
TOTAL ...	19,896,258	101,437,153	121,333,411

AND MEANS OF THE YEAR HAVE BEEN PROVIDED.

Deficit on ordinary account	£ 2,774,030
Extraordinary expenditure	„ 1,370,613
Deposits repayable and advances recovered	„ 370,587
Remittances	„ 196,970
Abyssinian advances	„ 1,375,330
Bills of exchange	„ 672,776
TOTAL ...	£ 6,760,306

E. F. HARRISON,
Comptroller General of Accounts.

R. B. CHAPMAN,
Offg. Secy to the Govt. of India.

Estimated Receipts and Payments in England

RECEIPTS.	England.	India.	TOTAL.
	£	£	£
1. Opening balance	3,025,981	10,175,804	13,201,785
2. Ordinary income	103,604	52,838,878	52,942,482
3. Deposits repayable and advances recovered, &c.	...	14,653,663	14,653,663
4. Local remittances	...	827,776	827,776
6. Remittance account between England and India	219,000	1,412,910	1,631,910
6A. Abyssinian recoveries	1,301,388	...	1,301,388
7. Bills of exchange	7,080,000	...	7,080,000
8. Railway capital	4,051,000	...	4,051,000
9. Borrowed	2,683,000	4,312,940	6,995,940
TOTAL ...	18,463,973	84,221,971	102,685,944

ABSTRACT OF THE ABOVE, SHOWING HOW THE WAYS AND

Local remittances	£ 350,665
Remittances, England and India	„ 110,226
Abyssinian recoveries	„ 917,819
Bills of exchange	„ 1,264,300
Borrowed	„ 4,289,500
TOTAL ...	£ 6,932,510

FORT WILLIAM;
FINANCIAL DEPARTMENT,
The 2nd April 1870.

EDWARD GAY,
Deputy Comptr. Genl. of Accounts.

and India during the year 1869-70.

PAYMENTS.	England.	India.	TOTAL.
	£	£	£
10. Ordinary Expenditure	11,972,473	41,595,603	53,568,076
10A. Extraordinary do.	1,170,043	1,446,700	2,616,743
11. Deposits repaid and advances recoverable, &c.	...	15,879,082	15,879,082
12. Local remittances	...	477,111	477,111
14. Remittance account between England and India	1,128,408	393,276	1,521,684
14A. Abyssinian expedition	1,569	382,000	383,569
15. Bills of exchange	...	5,815,700	5,815,700
16. Railway capital	2,370,000	2,382,500	4,752,500
17. Debt paid	501,300	2,205,140	2,706,440
18. Balance (closing) ...	1,320,180	13,644,859	14,965,039
TOTAL	18,463,973	84,221,971	102,685,944

MEANS OF THE YEAR ARE ESTIMATED TO BE PROVIDED.

Deficit on ordinary account	£ 625,594
Extraordinary expenditure	„ 2,616,743
Deposits and advances	„ 1,225,419
Railway capital	„ 701,500
Cash balance increased	„ 1,763,254
TOTAL ...	£ 6,932,510

E. F. HARRISON,
Comptr. Genl. of Accounts.

R. B. CHAPMAN,
Offg. Secy. to the Govt. of India.

Estimated Receipts and Payments in England

RECEIPTS.	England.	India.	TOTAL.
	£	£	£
1. Opening balance	1,320,180	13,644,859	14,965,039
2. Ordinary income ...	59,400	52,268,355	52,327,755
3 Deposits repayable and advances recovered, &c.	..	12,554,698	12,554,698
4. Local remittances	...	263,342	263,342
6. Remittance account between England and India	202,000	1,725,442	1,927,442
6A. Abyssinian recoveries ...	100,000	...	100,000
7. Bills of exchange	9,500,000	...	9,500,000
8. Railway capital	4,624,000	...	4,624,000
9. Borrowed	2,000,000	3,808,770	5,808,770
TOTAL	17,805,580	84,265,466	102,071,046

ABSTRACT OF THE ABOVE, SHOWING HOW THE WAYS AND

Cash balance reduced	£ 2,376,589
Surplus in ordinary account	„ 163,440
Local remittances	„ 66,066
Remittance, England and India	„ 12,506
Abyssinian recoveries	„ 100,000
Borrowed	„ 3,588,300
TOTAL ...	£ 6,306,901

FORT WILLIAM;
FINANCIAL DEPARTMENT,
The 2nd April 1870.

EDWARD GAY,
Depy. Comptr. Genl. of Accounts.

and India during the Year 1870-71.

PAYMENTS.	England.	India.	TOTAL
	£	£	£
10. Ordinary expenditure	11,836,745	40,327,570	52,164,315
10A. Extraordinary do.	...	3,062,300	3,062,300
11. Deposits repaid and advances recoverable, &c.	...	14,754,499	14,754,499
12. Local remittances	...	197,276	197,276
14. Remittance account between England and India	1,652,828	262,108	1,914,936
14A. Abyssinian expedition	...	...	...
15. Bills of exchange	...	10,000,000	10,000,000
16. Railway capital	2,297,000	2,871,800	5,168,800
17. Debt paid	...	2,220,470	2,220,470
18. Balance (closing)	2,019,007	10,569,443	12,588,450
TOTAL ...	17,805,580	84,265,466	102,071,046

MEANS OF THE YEAR ARE ESTIMATED TO BE PROVIDED.

Extraordinary expenditure	£ 3,062,300
Deposits and advances	„ 2,199,801
Bills of exchange	„ 500,000
Railway capital	„ 544,800
TOTAL ...	£ 6,306,901

E. F. HARRISON,
Comptroller General of Accounts.

R. B. CHAPMAN,
Offg. Secy. to the Govt. of India.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Tuesday, the 5th April 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen, Q. C.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
Colonel the Hon'ble R. Strachey, C. S. I.
The Hon'ble Francis Steuart Chapman.
The Hon'ble J. R. Bullen Smith.
The Hon'ble F. R. Cockerell.

PAPER CURRENCY BILL.

The Hon'ble SIR RICHARD TEMPLE presented the Report of the Select Committee on the Bill for the further amendment of Act No. XIX of 1861.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE, then moved that the Report be taken into consideration. He said that the Select Committee had made no alterations in the Bill and recommended that it should be passed. The Council

would recollect that the object of the Bill was two-fold. The first object was to give power to the Government to appoint persons other than the Mint Master to be Head Commissioner of Currency; and the second object was to increase, from four millions to six millions, the amount to be fixed as the legislative limit of circulation. As he had recently on two occasions explained fully the scope and objects and propriety of the Bill, and as the Select Committee had made no alteration, he had no further remarks to make.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE also moved that the Bill be passed.

The Motion was put and agreed to.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE presented the Report of the Select Committee on the Bill for imposing duties on Income and Profits. He said that the Report ran as follows:—

'We have imposed the penalty for false statements in declarations or lists made or delivered under section 18 or 19, by reference to section 177 of the Penal Code.

'We have provided that the instalments in which the tax is payable may be quarterly instead of half-yearly, and we have omitted as useless section 38.

'We have made some verbal alterations, and recommend that the Bill thus altered be passed.'

He had so very recently given the fullest explanation in his power of the reasons for the Bill, and having also stated the scope of its provisions, he would not trouble the Council with any further remarks on the subject.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Mr. Chapman.—"This is the first time I have experienced any difficulty in voting in this Council.

"I readily admit that members who, like myself, are unconnected with the Executive Government, are allowed the utmost liberty of opinion on all questions that come under consideration affecting the administration of the country, and that we are allowed every opportunity for arriving at an intelligent conclusion on such questions.

"On the present occasion I feel the embarrassment of ignorance.

"On the afternoon of Saturday last, we were summoned to hear the Hon'ble Sir Richard Temple read the lengthy discourse I now hold in my hand; and we are again summoned to-day to pass a law by which a limited but influential section of the community are to be subjected to an income-tax of $3\frac{1}{8}$th per cent., being $1\frac{1}{8}$th per cent. more than they now pay, and this at a time of profound peace and ordinary prosperity. Now, my Lord, this is not a light question, and I am conscious that I am no more qualified to sit in judgment on it than any other member of the public. No special information of any kind has been laid before us, and I must say that there is nothing in the Hon'ble gentleman's statement calculated to assist us in arriving at a conclusion.

"As far as I can understand, the gist of the case is this. Last year, an over-sanguine estimate of the opium-revenue was made. This year, the Government have thought it advisable to go into the opposite extreme, and to estimate that the revenue for the year we have now entered on will be one million less than the actuals for last year. To make up this deficiency, this additional income-tax is to be imposed. Now, I submit that neither the Government nor any other mortal men can foretell what the opium-revenue will turn out. If there is a surplus, which I understand is not likely, then I have no doubt we shall be told of it with great self-complacency by the Hon'ble gentleman next year. But if this most precarious source of income fails altogether, or diminishes in a most unexpected manner, I want to know whether the income-tax is to be the only support on which we are to fall back.

"My Lord, it is some eight months since your Lordship's Government awoke to the fact that, for years previously, you had been exceeding your income. I do not think it said much for the efficiency of the Financial Department that this chronic deficit should have remained so long undiscovered. But the course adopted by the Government met with general approval. They boldly faced the situation, took the public into their confidence, and made a clean breast of

everything. We well know how generously and loyally the confidence thus invited was responded to, and how readily the small section of the community on whom alone the increased income-tax fell accepted the burthen. As for the unfortunate masses, the price of whose salt was raised, they were, and probably still are, in happy ignorance of all that has taken place, or have, perhaps, by this time, consoled themselves with the reflection that it was 'their *qismat*' or fate.

"Such being the state of affairs, I think we were entitled to expect the Government would, on this occasion, prove that no effort had been spared to reduce the cost of administration, and to devise means by which the incidence of taxation might be more equitably distributed.

"The Hon'ble gentleman's statement is virtually silent on these two essential points. The reductions amount to half a million in Military, and over a million in Public Works, expenditure.

"Now, these reductions are of an obviously arbitrary and wholesale character, and could be effected by a stroke of the pen. What I think we had a right to expect was a clear statement showing the efforts that had been made to revise the expenditure on all the great branches of the administration. But there is a complete silence on this subject.

"I find, by the tabular statement, that the total expenditure budgeted for is over fifty-five millions. This vast sum is lumped together under thirty heads. I submit it is quite impossible, in the absence of detailed estimates, to arrive at any sort of conclusion as to how much of this expenditure is necessary, and how much is not. For my own part, I entertain the belief very strongly that considerable savings might be effected under almost every head, by thorough and independent revisions. I believe there is an unnecessary amount of highly paid agency employed in supervising our administration, and that, in our efforts at retrenchment, we should begin at the top and not at the bottom.

"I have formerly stated in the Council my opinion of the value of the control over the expenditure of subordinate Administrations exercised by the Government of India, and I now, on this important occasion, deliberately state that I believe this control to be of as unsatisfactory a character as it well can be. It consists in the Finance office at Calcutta or Simla endeavouring to negative or to reduce every single application for expenditure, and that without any knowledge of what the real requirements of the several Administrations are. It is a system of minute distrustful interference, which engenders a resentful spirit of opposition. In spite of all the efforts of the Department,

charges of all kinds continue to increase, while the machinery of Government is impeded by the friction occasioned. I really believe this question of the relation in which the Supreme Government should stand towards their dependencies is the most important and most pressing State problem of the day, and yet my Hon'ble friend disposes of it in one short paragraph. He says (page 45)—

'Having now completed my exposition of the finances, I shall, before concluding, mention that the subject of the Financial relations between the Supreme Government and the several Local Governments is still under the consideration of the Government of India. I have of course formed and recorded my own opinion on the whole subject. But it is really not in my power to say anything regarding the matter on the present occasion, as I cannot tell what decision will be arrived at, or by what time, if formed, it could be carried out.'

"My Lord, I do not think these remarks will satisfy the expectations of those interested in a solution of this important question.

"So much for the expenditure. I now turn to the Receipts. And here, one cannot help being at once struck with the entire absence of fertility of resource that has been evinced. With the exception of some trifling alterations in the Tariff, of too comically small a character to refer to, there is literally nothing but this increase of income-tax.

"My Lord, I believe this tax to be utterly unsuited to the circumstances of this country. I believe the small results obtained from it are quite incommensurate with the hostility it creates on the part of the few who are called upon to pay it, but who, nevertheless, constitute the intelligent classes of the community.

"The one redeeming feature in the tax is, that it falls on the Native traders, who, while they benefit perhaps more than any others from the security of our Rule, would not, but for it, contribute at all towards the burthens of the State. Nevertheless, they generally succeed in evading their liability, and, in my opinion, they might be got at in a far more direct and effectual manner. As to the rest of the tax-paying classes, your own servants are almost the only ones who pay the uttermost farthing. I do not say they are entitled to any credit for doing so, because they have no means of escape. But it would surely be a simpler plan, if they are to be taxed at all, to subject them to a percentage-deduction all round. Whether this would be a politic measure it is not for me, as an interested person, to say. Another class who pay the full quota are the fund-holders. I think it is a mistake to tax this description of income. Practically, by doing so, you simply diminish

the public credit, and will be obliged to borrow on proportionately less favourable terms. Then, as regards the mercantile and non-official European community, this class already contributes largely toward the Customs-revenue, and I cannot see the justice of specially subjecting our own countrymen to this impost. Lastly, with respect to the great landed proprietors and agricultural classes, I think the simplest plan would be directly to enhance their land-revenue.

"My view of the income-tax, on the whole, is this: It should, I think, be ordinarily maintained at a minimum of one per cent, if only with the object of keeping up the machinery requisite for its assessment and realization. It should be kept in reserve to meet the exigencies of a war or other unforeseen contingencies. I believe the loyalty of the people would induce them readily to pay, under such circumstances, what in ordinary times of peace and prosperity they consider to be an intolerable burthen.

"The conclusion I have arrived at is, that the Government have failed to satisfy us of the necessity for this extreme measure. Nor do I consider we can be satisfied that sufficient efforts towards retrenchment have been made.

"My Lord, I can truly say I have been much perplexed as to the course I should pursue on this occasion. After much anxious thought, I think that, constituted as the Government of this country is, I should not be justified in voting against the Bill. In refraining from doing so, I beg to disclaim all responsibility for a measure the reasons for which I have had no opportunity of making myself acquainted with, and which, on the face of it, is opposed to my own judgment."

The Hon'ble Mr. Bullen Smith—"My Lord, I have to move that, in clause 6, line 1, of the Bill now under consideration, for the words 'six pies per rupee' there be substituted the words 'one per cent.' In doing so, I need scarcely say that I have no hope of success, presuming, as I must, that the policy which was enunciated to us on Saturday last comes before the Council, not as the personal views of the Hon'ble Member in charge of the finances, but as the views of your Excellency's Government collectively, and therefore, as such, likely to command a large numerical majority in this Council. It is therefore not with the hope of success that I propose this amendment, but with a view of formally availing myself of the opportunity which your Lordship decided this day's meeting of the Council would afford, for discussing the Budget which the Hon'ble Member in charge of the finances unfolded to us on Saturday last. I am sure the Council must feel indebted to the Hon'ble Member for the

fulness and lucidity with which he placed before us the finances of the country, past and prospective; and the very recent date to which many of the returns are brought up shows no ordinary amount of care and diligence on the part of the Department over which the Hon'ble gentleman presides. Not less interesting, I am sure, must have been to the Council the able and weighty parting remarks of His Excellency the Commander-in-Chief, while the exposition of the views of Government in the matter of Public Works for the year now begun, with which your Excellency was good enough to favour us, will, I doubt not, be highly appreciated beyond these walls.

"I wish, my Lord, I could think that the mode by which the Hon'ble Member in charge of the finances proposes to provide for the service of the country during the current year would prove equally satisfactory, or, what is of more consequence, that the Budget should be found to have been framed on principles which, with reference to the circumstances of the country, would commend themselves as sound and equitable. I cannot hope that the Budget, as it now stands, will be considered to rest on any such good foundation; it will not, I fear, tend to promote confidence in the management of the finances, nor do I think that, in its present form, it merits the approval of this Council or the country at large. To several important items I feel myself constrained to take grave exception, and that new taxation which forms the subject of the Bill now before the Council, by which the Hon'ble Member has balanced revenue and expenditure and shown a small prospective surplus, is, in my humble opinion, a measure of almost unexampled severity, and one which, although lying ready to hand, the public had a right to expect would not have been thus freely availed of, except under circumstances of the gravest necessity, and when all other legitimate means of provision had been tried and found insufficient. Very soon after I took my seat in this Council, the Hon'ble Member brought up, exceptionally, the state of the finances, and then obtained leave to double the income-tax for the remainder of the current year. To that measure I gave a silent vote of acquiescence, believing that there was then a pressing necessity for the impost, to enable the Government to tide well over the next few months, while reductions and savings of various kinds were being planned and carried out. But I believed the extra impost would terminate with the financial year. I did not expect its renewal would be asked at our hands, much less that the Hon'ble Member could meet this Council, as he did on Saturday last, with the astounding demand that this most unpalatable, and, speaking relatively, this most unprofitable, tax should be raised to six pies in the rupee, or about 3$\frac{1}{8}$th per cent.

"In common, my Lord, with almost all who have troubled themselves to think about the matter at all, I have always considered this income-tax unsuitable to this country, and the more I have heard of its working the stronger has this opinion become. From the nature and habits of the people with whom we have to deal, it is a tax which never has brought, and I believe never will bring, into the coffers of Government anything like the amount it ought to bring, if fairly paid by all those who are supposed to come within its scope. It is therefore a tax which falls with peculiar severity on comparatively few, and it is a tax which is attended with much oppression in the rural districts, not only towards people who ought to pay, but to many whom the Government do not expect to contribute towards it. It will be in the recollection of the Council that, when the doubling of this tax, to which I have already alluded, was brought forward, our Hon'ble Colleague, His Highness the Mahárájá of Jaypúr, described it as an odious tax, a description which I believe most aptly pourtrays the feelings of the people of this country towards it. This opinion of the Mahárájá was endorsed by an Hon'ble Member of your Excellency's Government, Sir Henry Durand, whose long experience in different parts of India ought not, in a matter of this kind, to be lightly esteemed. The Hon'ble Member, Sir Richard Temple, took sharp exception to the opinion expressed by the Mahárájá and Sir Henry Durand, and was at pains to prove that the tax could not be 'odious to the people,' as it is not paid by them, but touches, and is paid by, only a limited class, say one in one thousand.

"Now, accepting the Hon'ble Member's statement of the incidence of this tax as given in November last, I would ask him with what justice he now comes to this Council and asks that the whole burden of his deficit be thrown upon this comparatively small section of the community, for this is really what the measure amounts to. This may be a convenient way of making up a financial statement, but it appears to me far removed from sound and equitable Finance.

"To us, who sit round this table and to many others, this new taxation, however unpalatable, involves nothing of privation, no decrease of expenditure; it represents probably nothing more than a smaller balance at our credit at the end of the year; but when I look at the extensive range of incomes to which this measure applies, it is impossible not to feel that, in many cases, the operation of this Act will be sadly different. Many of the fixed incomes to which this taxation will apply are, especially in the case of Europeans, notoriously straitened and insufficient, owing to the rapidly increasing cost of residence in this country. On such, the policy of the Hon'ble gentleman will

fall with terrible severity, and will involve, to their recipients, a measure of anxiety, self-denial and difficulty such as we here can but faintly appreciate. On a late occasion, your Excellency paid a high and well-deserved tribute to the officers who in various capacities carry out the work of administration over the length and breadth of this country The generous words then spoken by your Lordship have, I doubt not, sent a thrill of pleasure through many a breast; but I would ask the Council to consider what effect the measure to-day before us is likely to produce. I believe, my Lord, that, as these officers have been loyal and zealous and true in the past, so they will be loyal and zealous and true in the future, but the weight of ever-present, ever-pressing pecuniary anxiety is a burden which few. men can long carry with impunity; it may not affect the character of the worker, but I believe it undoubtedly will sooner or later, and probably unknown to himself, materially affect the character of his work. And where, my Lord, I would ask, is this heavy direct taxation to stop ? I, for one, distrust some of the figures on the revenue-side of the Hon'ble gentleman's budget, and have correspondingly little faith in the item of surplus or in the prospect of relief at the end of the current year. This income-tax was in my opinion rightly described by one of the Hon'ble gentleman's predecessors as a tax which, owing to its unsuitability to this country, ought either to be altogether laid on the shelf, or kept at a minimum, as a mighty engine of reserve, to be used only in the hour of direst need. But when we find our Finance Minister, in a year of profound peace and amidst circumstances by no means abnormal, putting forth his hand and freely using this powerful weapon to rack-rent, so to speak, a comparatively small section of the population, and thus summarily end his difficulties, it appears to me that we may well be alarmed at the prospect which is in store, should the financial out-turn of the current year resemble that of many of its predecessors, and the fair vision of surplus which has been paraded before us prove altogether delusive.

"Passing on to that paragraph of the Budget which relates to Customs, I find some not very important changes, to which no exception can fairly be taken; but I also find retained the one important item which I think ought to have been eliminated, alike with reference to that sound, and in the end remunerative, policy which would abolish all export-duties, and to the peculiar circumstances of the particular trade. I allude to the export-duty on rice. When dealing with this subject some years ago, Mr. Massey, who was then in charge of the finances of India, gave a very distinct pledge that, if at any time this duty appeared to be operating prejudicially to the trade, Government would not be slow to grant relief, even in the middle of a financial year. It was lately

my duty, in another capacity, to urge on the Hon'ble Member now in charge of the finances, that the time had arrived when he might fairly be called upon to redeem that pledge and let the export go free. I pointed out that the Burma rice-trade had of late been one attended with heavy loss, and urged that a duty which at the time amounted to about six per cent. on the Home selling-value, if not the cause, must at least be considered a material aggravation, of that loss. These views were amply borne out by the report of the Chief Commissioner of Burma and by other competent authorities. As regards Bengal rice, I pointed out that our total export had fallen-off by one-third; that our China trade was gone, and that our export to other markets, which formerly were entirely dependent on Bengal for their supplies, had decreased, in some cases by more than one-half. I pointed out the extreme severity of the competition to which our rice was now exposed, owing to the rapidly rising production of Saigon and Bangkok, from both of which places the export has enormously increased; and having done this, I hardly know what better case for relief could have been made out, or what better proof could have been offered, that the possible injury to trade, of which Mr. Massey spoke, was now in actual operation. It is with corresponding regret, therefore, that I find all representations have been in vain, and that the Hon'ble gentleman is determined to retain these export-duties, because he thinks there are signs of amendment, and because he thinks the depression has been caused by causes other than the duties. I must say that I cannot share the Hon'ble Member's sanguine expectations, and that the grounds of his hope in a bumper-crop in Bengal, such as we may not see again for years, and a famine in a far distant market, which latest accounts report to be already satisfied, are not exactly the grounds on which a prudent Financier would care to build. I view, my Lord, the retention of this rice-duty with sincere regret, and in my humble opinion it is rather an unseemly spectacle to see the Government of a great commercial country thus holding on tenaciously to what is, after all, but a trifling percentage of its income, and insisting upon weighting, up to the last, what I fear must be considered a dying trade.

"Passing next to the all-important question of Opium, I feel bound to say that the paragraphs of the Budget relating to this subject appear to be almost the most satisfactory part of the whole, inasmuch as I find in them evidence that the Government of India appears to be fully and practically alive to the precarious nature of this branch of the revenue, a branch which has of late years materially decreased in value, and one which I very much fear will go on decreasing until, if it does not become altogether extinct, it will at least cease to occupy the chief place it has long held in the fiscal revenues of this country. I know that the estimate of 975 rupees, which the Hon'ble Member has this year put

down for the Bengal drug has been arrived at with the utmost care, and I am not prepared to say that it will not be obtained, although, for my own part, I should have liked to see it at least twenty-five rupees lower, or rupees 950 per chest. I find that, putting all charges at a minimum, indeed on a basis on which European firms would not care to work, the price in China will have to rule at an average of 470 rupees to return to Calcutta the Hon'ble gentleman's average of 975 rupees. Now, the latest average quotation from China, received last Saturday, is 513 rupees with a very weak market and every prospect of further decline. A maximum of forty dollars may appear a good and safe one, and I sincerely trust our calculations may not be disturbed; but when I consider that prices in China have, during last year, declined upwards of 120 dollars, that our prices here have, during the same period, fallen from an average of 1,319 rupees on 4th April last year, to 1,085 rupees yesterday, and that, notwithstanding these greatly reduced figures, the trade has proved eminently unprofitable and shows no signs of assuming a healthy condition, I confess I am not without apprehension for the future, and cannot look forward with such confidence as I could wish to the maintenance in China of such a figure as will recoup a purchaser here at the Government average of 975 rupees. It seems, my Lord, that, go down as we may in our cost on this side, the fall in China more than keeps pace; and, looking to this steady reduction, it appears impossible to resist the conviction that the India-grown drug has now to compete with China cultivation to an extent far beyond what is generally supposed. This opinion seems generally accepted in China, and I see it reported in a recent paper, that the Government of that country, or at least its high officials, are not maintaining in this matter the merely permissive attitude with which they are generally credited; that on the contrary the high Mandarins find in this Native cultivation a source of great personal gain, are fostering it to the utmost and declare their intention of frustrating, by increased export-duties, any reduction that may be brought about in the cost of the Bengal drug.

"I am well aware, my Lord, that it is not open to me, as a mere Additional Member of this Council, to make any specific proposal as to ways and means; but I feel how much easier it is to find fault than to amend, to pull down than to build up; and therefore, with your Lordship's permission, I would in a few sentences briefly sketch one legitimate way in which our Finance Member might, in my opinion, have found his way out of his difficulties. It appears to me, my Lord, that while some portion of these difficulties may be attributed to bad management in the past, a further portion to the decline in Opium, and other unforeseen causes, it will not be denied that our late free expenditure on Public Works has had much to do with the present deficit; in a laudable desire to pay

as much as possible out of revenue, we have been exposing that revenue to a strain greater than it can bear. I do not know what amount has been spent on Public Works during the last three years, nor can I say how much of this expenditure has been ordinary and how much extraordinary. I believe, however, that several millions have been spent on the new system of barracks for European troops, and that, in accordance with instructions from the late Secretary of State, the whole of this has been debited to revenue. Dealing, as we are, with a revenue not equal to our pressing wants, this is a mode of adjustment which seems to me eminently unfair and unreasonable. If the Department over the practical details of which the Hon'ble Member on my left (Colonel Strachey) presides does its duty; if the Government of India gets full value for its money, these barracks should be good for many a year to come, and this being so, although they are not strictly speaking reproductive works, I have seen no sufficient reason assigned why their whole cost should fall upon the years of their construction. Looking to the terms upon which this Government can borrow, and to the by no means immoderate amount of its existing debt, I am clear that all works such as these should be paid for by terminable loans, specially contracted for the purpose, the interest of the whole being regularly written-off each year to revenue, together with such proportion of the capital as might be determined upon. True, the other mode of adjustment was ordered by the late Secretary of State, but the Hon'ble Member must have seen long ago that such an order was more than his revenues could bear, and if he had advised your Lordship to represent this strongly to the present Secretary of State, with a request for permission to borrow, in the manner indicated, the sums already taken from revenue and all further requirements, then I think the Hon'ble gentleman would have done his duty fairly towards the tax-payers of this country, and would have brought before the Government and the public a very different Budget from that of Saturday last.

"In conclusion, I have only to apologise to your Lordship and the Council for taking up so much time. My excuse must be that this is the only opportunity I shall have of putting on record my strong objection to the new taxation which the measure now before the Council proposes to put upon a limited section of the population, and especially on the European community, on whom, as the Hon'ble the Financial Member of Council knows right well, this taxation will chiefly fall."

The Hon'ble MR. COWIE—"MY LORD, a tolerably long experience in this Council enables me to say that what is by courtesy called a discussion on the Budget is no discussion at all, inasmuch as no amount of argument will alter the foregone conclusions which have been arrived at. All that Hon'ble

Members can do is to ventilate their individual opinions, and this I will briefly attempt to do. I must express my unqualified surprise at the poverty of invention which, in the face of an estimated deficit, can find no remedy but two or three turns of the screw of the income-tax. Surely, my Lord, there must be other and preferable roads of taxation open to the Finance Minister. Why is not a tax imposed on tobacco? In a country where every man, woman and child smokes, and where the Government has, for generations, been so successful in a monopoly of one drug, it could not be difficult to establish another. Then, there is a succession-tax which I have advocated before in this place, and which I may call an income-tax on the dead, with the advantage that the dead will not wince under it, as the living are certain to do under the tax we are now considering. I am aware that an attempt at a succession-duty is made in the Court Fees Bill, which establishes a charge of two per cent. on all probates and administrations, but that will be chiefly confined to the Presidency towns and to estates of Europeans.

"Lastly, my Lord, at the risk of being charged with rushing in where a Finance Minister fears to tread, I will mention a much larger field for taxation. I have often wondered for how long the Government of this country is to be bound by a law passed seventy-seven years ago. We see great and various changes at home and in Europe, of laws which were once deemed perpetual, and I ask, why is Lord Cornwallis's settlement to be like the law of the Medes and Persians which cannot be changed? The landholders under that settlement have had the value of their property increased by British protection and the enormous expansion of British commerce, and I suggest that the time is come when they should contribute their fair proportion to the revenue of the country.

"As I have not given notice of any amendment, I cannot now propose one. Had I done so, it would have run in this strain—that the income-tax be fixed at two per cent., and that it be an instruction to the Finance Minister to lose no time in devising another mode of taxation to provide for the alleged deficit in 1870-71. As it is, my Lord, I shall support the Hon'ble Mr. Bullen Smith's amendment, and I cordially endorse what he has so ably said."

The Hon'ble MR. STEPHEN said that he had been called upon to give his opinion on the matter before the Council. He had very little indeed to say. He had heard with much concern the remarks that had fallen from Mr. Chapman. He could not but feel that there was a considerable amount of weight in them. He did not possess, and it was hardly to be expected that he should possess, that knowledge of Finance or the position of the Government, which would enable him to give an opinion much worth having, of the means by which

the exigencies of the Government should be provided for. But he did feel that, although, as a consequence of past operations to which he had had nothing to say—although, under the circumstances in which we stood—it might be necessary, and he had no doubt it was necessary, on the present occasion, to impose the tax which Sir Richard Temple had suggested, it was a most grievous necessity. He (MR. STEPHEN) felt sure there was no member of the Government who was not sensible of this, and who would not wish, as soon as any means could be devised of a more satisfactory kind, to do away with this tax.

The Department under his charge was one which had less connection with finances than any other; but if it should be in his power to contribute in any degree to lessen the cost of maintenance of the establishment for the administration of justice, he would feel the greatest satisfaction in doing so. He did not wish to enter further on the subject before the Council; but he did not like to give quite a silent vote. He thought that, if the non-official members knew the amount of labour—of real and earnest labour—expended on these figures, the amount of care which the Government had taken to scrutinize the various items of expenditure, and if they could also realize the extreme difficulty of adjusting the financial arrangements of four or five different Governments, and of the entire alteration of principle within the short space of some six or seven months—if they were fully aware of these difficulties, they would feel that great consideration was due to the way in which the Financial Department had done their duty. He did not say that the present Budget was one with which the public ought to rest satisfied. He had already said that Government ought not to rest satisfied. But in introducing a change of principle in the finances of a country like this, of which the finances were far more difficult to regulate than those of any other country, great indulgence was due to the Government when they showed, as they were showing, an honest endeavour, a sincere desire, to institute a state of things that would tend to more satisfactory results in future.

The Hon'ble MR. STRACHEY—"The Hon'ble Messrs. Chapman, Bullen Smith, and Cowie have told the Council—I may say have complained—that no sufficient reason has been given by Sir Richard Temple and the Government for the conclusions that have been arrived at, that this heavy and most unwelcome measure of taxation is really necessary; and they have given us to understand that they are not satisfied that this heavy deficiency which we have to make good could not have been made good by some other unobjectionable means. My Hon'ble Colleague will doubtless make his own reply to the observations that have fallen from those Hon'ble Members, but I should like to say

something to show the grounds on which I consider that the propositions made by Sir Richard Temple, and which have been accepted by the Executive Government, ought also to be accepted by the Council and the public. To appreciate the validity of these grounds, I think it is first necessary to come to a definite understanding as to what the causes of this deficit, not only in the present year, but still more what the causes of these constant deficits of past years, have really been. In the first place, I will tell the Council what, in my opinion, have not been the causes. I think that this at any rate is quite clear, that the deficits in which we find ourselves have not arisen from any falling off of any great branch of our national wealth. I think it essential that there should be no misunderstanding on the part of the Council or of the public on this point; for nothing could be more mischievous than an erroneous supposition that our deficits had in any way arisen from the decay of public resources. The figures before the public show that, in the last six years, our gross revenues have increased from £ 45,000,000, to nearly £53,000,000 in the year which has just expired. The receipts of the year 1869-70 were larger than the receipts of any previous year in the history of India, and this, except to a quite secondary degree, was not owing to the imposition of fresh taxation, but to the fact that every great branch of our revenue, excepting Opium (and I am not at all satisfied that even Opium is an exception) has gone on steadily improving I will take the five main sources of revenue for the five years preceding the year just terminated. I omit the year 1866-67, because it was a year of eleven months only, and no proper comparison with other years can be made. I find, taking these great sources of revenue (I omit assessed taxes, for this obvious reason, that there have been constant changes in the system under which they have been levied) Land, Excise, Customs, Salt and Stamps, that there has been a constant increase of revenue. Thus, the land-revenue, which in 1863-64 was £20,300,000, has risen, in 1869-70, to £21,500,000; in the coming year, 1870-71, it is estimated at £21,000,000; and although these figures at first sight seem to show that a falling-off in the land-revenue is anticipated, in reality there is nothing of the kind; for, as my Hon'ble Colleague, Sir Richard Temple, has explained, the land-revenue of the past year was swollen to the extent of several hundred thousand pounds by the adjustment of the proceeds of the sale of waste-land. If that had not taken place, the land-revenue of the coming year would have been greater than in any year preceding. Under the head of Excise, the revenue, which was £2,000,000 in 1863-64, has risen in the past year to £2,240,000, and we expect to get a little more this year. The customs-revenue, which gave us in 1863-64 £2,300,000, gave us in 1869-70 £2,400,000, although last year was a year of depressed trade, and, in a

great part of India, of scarcity and famine. In these figures of the past year we ought also to take into consideration that, in the beginning of the year, reductions in the tariff value of many of the most important articles of trade were made to the extent of fifteen per cent. If that had not taken place, we should have obtained some £150,000 of additional revenue; and in that case, the customs-revenue of the past year would have been larger than that of any previous year, with the exception of 1868-69, a year of extraordinary prosperity; and even in that year the receipts would have been only about £100,000 more than last year. The revenue from Salt has increased from £5,000,000 six years ago, to £5,800,000 last year; and the revenue derived from Stamps has increased from £1,700,000 in 1863 64, to £2,400,000 last year. The total result under these great branches of revenue was, that our receipts had increased from £31,500,000, to £34,400,000 in five years; and they will, according to the prepared estimates, stand at about the same amount in the coming year. That is, our revenues have grown £3,000,000 in the course of the last five or six years.

"I said that Opium is a possible exception; yet it must not be forgotten that, in the year just closed we obtained close on £8,000,000. It is true that this was a small return compared with that of the three preceding years, when it varied between £8,900,000 and £8,400,000. But if we go further back than three years ago, £8,000,000, or even £7,000,000, would have been considered a magnificent revenue to be derived from Opium. If we add the receipts from Opium to those derived from the other great branches of revenue to which I have just been referring, the receipts of the year just closed are equal to or exceed the average of the five years preceding. Adding the receipts from Opium to the figures before quoted, the total receipts have increased from £38,350,000 six years ago, to £42,360,000 in the year just past. That is to say, notwithstanding the falling-off in Opium compared with the receipts of the previous three years, there has been a large increase of revenue. The receipts under these great heads have given us, in the year just closed, £4,000,000 more than they gave us five years ago. I repeat, therefore, that this deficit has not been caused by any falling-off in the resources of the country.

"What, then, have been its causes? How has it come to pass that, in this period of peace and prosperity, we find ourselves in this great difficulty, involving the necessity of these unwelcome measures of fresh taxation and of retrenchment? I gave my opinion on that point in the debate which took place in this Council in November last. I then said that the difficulties and

uncertainties of Indian Finance were, in my opinion, the temporary accidents of an imperfectly developed financial system. For years past, every year has regularly ended in a deficit, and the obvious reason has been that, although the growth of the revenues has been very great, the growth of expenditure has been still more rapid. Doubtless it is true that expenditure must go on increasing with the improvement of the administration. This is inevitable; but I think it clear that the increase has gone on at a far greater rate than was either right or necessary, and we may find proof that this has been the case, in the fact that, although only some six or seven months have elapsed since we became aware of the serious difficulties of our financial position, we have been able to reduce our estimated expenditure for 1870-71 by £1,500,000 below that of the past year, and by £2,200,000 below that of 1868-69. And the main reason of this great increase of expenditure was this, that we really did not know that we were expending more than we could afford. At the beginning of every past year, the Financial Department has laid before the Financial Member of Government an estimate of income and expenditure, which the actual experience of the year has proved to be totally untrustworthy; and the truth is that, for some years past, we have all, Government and the public alike, been living in a sort of fool's paradise, accepting these imaginary figures as facts, and congratulating one another on the excellent state of the exchequer. The result has been perfectly natural. Although we have had a constantly increasing revenue, we have fallen into serious financial difficulties, and have now to bear the burden of fresh taxation and the other evils which financial difficulties always bring. Anyone not acquainted with the facts might suppose, from the remarks of the Hon'ble Messrs. Chapman and Bullen Smith, that the Government had been doing nothing to put matters on a more satisfactory footing, and that we had been drifting on from bad to worse, without any effort to put things straight. Nothing could be more unjust than a supposition of that sort. It is now only six or seven months ago since the Government told the public, in the most unreserved manner, everything that we could tell regarding the real condition of our affairs I am sure the Council will agree with me when I say that at any rate we did our best to conceal nothing. The figures now before the Council show that, if the measures then begun had not been taken, we should have ended the year just closed with a deficit of more than £2,000,000. But the result of the measures taken then, and the measures taken since my Hon'ble Colleague resumed charge of the finances in the beginning of November last, is this, that we hope to reduce expenditure in the coming year by £1,500,000 below that of the year just completed, and by £2,200,000 below that of the year previous; and, even if no addition were now to be made to the income-tax imposed

in November last, we should, in the coming year, levy more than a million of additional taxation above that which was imposed a year ago. We have, therefore, in the course of the last few months, taken measures which will have the effect, in the coming year, of improving the balance between income and expenditure by more than £2,500,000.

"Under these circumstances, I must say that I think it most unjust to talk as if the Government had been doing nothing. It is unquestionable that the measures already taken have not been enough. If the income-tax had remained at two per cent.—and, in spite of the amendment proposed by the Hon'ble Mr. Bullen Smith, I do not suppose there is anybody in India who really expected that it would be possible to reduce it below that amount in the coming year—we should still have had a deficit of about £750,000 to make good. It will be doubtless said—indeed it has been said to-day—that, after the experience of the past, what confidence is it possible to place on these estimates of the future now laid before the Council? If the public had the opportunities which we have had, of knowing the labour which has been bestowed in the framing of these estimates and the system under which they have been framed, I believe that they would agree that the estimates of the present year are really as good estimates as it is possible for the Government to make. Thanks to the untiring industry and ability of Mr. Chapman, the Financial Secretary to the Government, to which I have more than once borne public testimony, these estimates have been framed in a totally different manner from anything attempted before. The new arrangements under which they have been prepared were referred to by your Excellency in the discussion which took place in November last; and having been inaugurated under your Excellency's orders, when the Government was at Simla last year, I can say, from what I know of them personally, that I believe they deserve the confidence of the public.

"For my part, I am quite satisfied that an additional sum of about £750,000 must, by some means, be provided for the service of the coming year. The question is, how is this sum to be provided? It has been suggested that it should be obtained by a further reduction of expenditure. It has been said, why should we not diminish, by another £750,000, the grants for Public Works? I think that the Council and the public ought clearly to understand what has been done already in this direction. The actual charges of the Public Works Department, ordinary, for 1868-69 were £6,270,000; the Budget-grant for 1869-70 was £5,800,000. Owing to the reduction made last September, the actual expenditure in the past year was diminished to £5,000,000. In the

coming year it is proposed to reduce this further to £3,998,000; that is, to some £1,800,000 below last year, and £2,270,000 below the actual charges of 1868-69. It must be remembered that the whole system of the Department of Public Works in this country has been constituted on the assumption that very large sums of money have every year to be expended, and it is impossible suddenly to make great and fundamental changes in the organization of a Department like this, without involving ourselves in enormous loss. The result even of the reductions already made, although doubtless considerable relief has been given by the transfer of establishments to extraordinary works provided for by loans, has been that the existing establishments are largely in excess of those really required for constructing the works in progress. Works are going on from one end of the country to the other, the stoppage of which is impossible without incurring excessive loss; there can be no question that great loss has been incurred already, and for confirmation of this statement we need not go further than Calcutta itself. It is impossible to go out of our houses without seeing huge half-finished buildings remaining untouched for want of funds. When large sums of money are thus locked up, the cost to which the country has been put is for the time completely thrown away. In some provinces, in the coming year, almost the whole of the grants will be devoted simply to the maintenance of existing works, and throughout India nearly the whole expenditure will be for the maintenance of existing works, or for the completion of works already commenced; for, although many of the works on which expenditure is being incurred are called new, in reality the actual new works are very few indeed. The proportion of the grants expended on works commenced for the first time will be something extremely small.

"I am quite convinced that to cut down Public Works expenditure still further would be nothing short of ruinous, and the question rather is, whether it has not been cut down too low already.

"The Hon'ble Mr. Chapman has stated that he believes there is hardly any branch in the public service in which further reductions might not be made. All I can say in reply is, that we have been doing our best to make reductions in every branch of the service, and considering that we commenced only six or seven months ago, we have been on the whole more successful than we had a right to expect. Every possible, every reasonable, reduction will go on; and in the estimate of the coming year, credit has been taken for all the reductions we are certain of making; a great many others may probably be made, but we have no right to enter in the estimates anything of which we are

not reasonably certain. The conclusion seems to me inevitable that £750,000 is required, and that this sum cannot be gained in the coming year by further reduction of expenditure.

"Now, what means are at our disposal for raising this amount? The Hon'ble Mr. Bullen Smith has told us that we ought to borrow: it is true that he did not tell us in so many words that we ought to borrow to meet deficiencies in the ordinary expenditure of the year, but he told us that we ought to borrow to meet the cost of the great military works in progress. If there is a question that has been debated *ad nauseam*, both in this Council and outside it, and at Home, it is whether these military works ought or ought not to be paid for out of borrowed money. I do not think it necessary to take up the time of the Council in going over this question again. The conclusion was deliberately arrived at two years ago by the Government of India and the Secretary of State—and I think I may say that it was distinctly approved by Parliament—that it is not right to borrow for these works; that there was no more reason to call these particular works extraordinary, and to treat them exceptionally and borrow money on account of them, than it would be to borrow money for any other necessary works required for the increasing wants of the administration. I think, for my part, that the conclusion was perfectly and undoubtedly right; and that there were no grounds for calling these works extraordinary, more than many other works we could mention. I think, therefore, that my Hon'ble friend's proposition amounts to this, that we are to borrow money to cover a deficit in the ordinary expenditure of the year.

"As to the propriety of borrowing money under such circumstances, I will, with your Excellency's permission, read to the Council two paragraphs of a despatch which we sent to the Secretary of State only a few months ago, and which was published to the world last October. The Government there wrote:—

'We are satisfied that there is only one course which we can properly follow. We must no longer continue to make good the deficit of each succeeding year by adding to the public debt. And we must determine, whatever be the difficulty of the task, that there shall, henceforth, be no room for doubt that, in time of peace, our income will always be in excess of our ordinary expenditure.

'This, which, under all circumstances, would be the duty of our Government, is, at the present time, a duty of great and unusual urgency. Our ordinary debt is now more than ninety millions. Our revenues are already liable for meeting the guaranteed interest on a railway capital of nearly one hundred millions.* We are embarking on a system of borrowing

* Including the capital not yet paid up.

for the construction of irrigation-works and railways, under the direct management of the Government, which will add, every year, very large sums to our liabilities. We confidently expect that this system, by means of which we hope to cover India with a net-work of railways and canals, will add immensely to the national wealth, and, ultimately, to the resources of the Government. But, whatever precautions we may take to secure economy of construction and the good management of these works, and to ensure the early development of the revenues which they will yield, a long time must necessarily elapse, during which the payment of the interest on the loans contracted for these great undertakings will form a heavy, and, probably, an increasing, burden on the resources of the state.

'Under such circumstances, nothing could be more injurious to our credit in the money-markets of the world, than that we should borrow money to supply our ordinary expenditure in time of peace.'

"After such a statement as that, published seven months ago as the deliberate determination of the Government, how could we now tell the public that we have abandoned that principle, and that we now propose to borrow money to make good a deficit incurred in our ordinary expenditure in a time of peace? It seems to me that to do this is absolutely out of the question. The practice of borrowing money to meet financial difficulties such as those in which we now find ourselves is one utterly subversive of any proper financial system. If we had any great calamity to deal with, the case would have been very different; but, as I have endeavoured to show, we have a magnificent and constantly growing revenue, and an expenditure which the reductions already made prove to be, to a great extent, under the command of Government. How can any one say, under such circumstances, that we ought to borrow to meet this deficiency?

"Then, a suggestion has been made by the Hon'ble Mr. Cowie: he has told us that we ought to put on a succession-duty and a tobacco-tax. I will not attempt to discuss at present the propriety of these recommendations; they have been repeatedly made on previous occasions; they have been discussed by the Local Governments and authorities throughout India, and about two years ago the Government published in the *Gazette of India* (unless I am very much mistaken in my recollection) the reasons which led the Government to believe that the imposition of these taxes would be inexpedient; and, if I remember rightly, the Secretary of State, having considered all that was to be said on both sides of the question, expressed his concurrence in the conclusions at which the Government had arrived. But whatever the real merits of these suggestions may be, this is plain, that to adopt these suggestions now would give us no immediate and present relief. We want £750,000 for the service of the year just commenced; and this is certain, that no succession-duty and no

tobacco-tax which we can now set agoing will give us the relief we require. Then, I ask, what means remain to us to get this £750,000? My Hon'ble Colleague, Sir Richard Temple's answer has been that the only way in which we can meet this immediate deficit is by making an addition to the income-tax. I am sure that no one can regret more than I regret this necessity; but I believe it to be the only measure that is at this moment practicable. I agree with very much that the Hon'ble Mr. Chapman said as to the injustice involved in levying this tax at the high rate proposed. I may say, for myself, that if I did not honestly believe that we have every right to expect that this heavy burden will really be only a temporary one and that we may reasonably hope that it will not last beyond the present year, I should be disposed to say that nothing should induce us to give our consent to it. My Hon'ble Colleague said that he could make no promise whatever regarding the duration of the tax, and he was quite right to say so; for, on such a point, it is impossible for the Member in charge of the Finances to make any promise. No one can tell what the future may bring forth, and what new circumstances may arise to make the fulfilment of promises impossible. But I think that, if peace and tranquillity be maintained and the country remain as prosperous as now, the public will have a right to expect that this tax shall not continue at the high rate which is now proposed. I have always maintained the expediency of maintaining the income-tax at a low rate of assessment as a permanent part of our financial system. I have said before now in this Council that I believe the wise course to adopt is, while we enjoy peace and tranquillity, to bring our income-tax machinery into the best possible order; to learn by experience how it can be worked with the least amount of objection; and, while we accustom the people to the tax, to keep the rate at which it is levied so low that it shall not be felt as a seriously heavy burden. We shall then at any time be able, in case an emergency should arise requiring an immediate increase in our resources, to add one or two millions a year to our income merely by raising the rate of income-tax by one or two or three per cent.; but if, in time of peace and prosperity, we increase the income-tax to an excessive amount, I agree with the Hon'ble Mr. Chapman that we shall have shut ourselves off from almost the only certain and immediate source of financial relief to which we can have recourse in times of danger or serious difficulty.

"When, in 1860, Mr. Wilson proposed the imposition of an income-tax at the rate of four per cent., the country we all know was suffering from one of the most tremendous convulsions that any country ever went through. At the present time, not only are we suffering from no such convulsion, but, with the possible exception of Opium, our revenues are in a flourishing condition.

"I have said what I believe to be the real cause of our deficits. I have said that I believe them to be the consequences of the inefficient financial system of past years, under which, almost without being conscious of the fact, we have gone on year after year spending immense sums of money beyond our income. The justification of the income-tax now proposed is, that it is required for a purpose which, although very emergent, is one only of temporary necessity. It is required to tide over a temporary difficulty which we see no immediately available means of meeting in any other way that would not be still more objectionable. But it may be asked, what security is there that the deficit will be temporary, and that this heavy burden will continue for a short time only? I answer that, supposing of course no great emergency or danger arises which we cannot now foresee, we have every right to expect that our revenues will go on becoming more productive, and we know, also—and I am sure that your Excellency will unhesitatingly accept the responsibility of this—that a stop will be put on the constantly increasing expenditure which has been going on for many years past.

"We have every right to anticipate, in the coming year, improved revenue and decreased expenditure. But suppose these anticipations are not fulfilled, what security have we then for the future? I answer that this question has already come under the serious consideration of the Government, and it is the duty of the Government to adopt measures which shall increase the resources or diminish the responsibility of the Imperial Government to an extent sufficient to remove all our financial difficulties. How this is to be done it is not for me to say; but if not done, the Financial Department of this Government will deserve everything bad that the public can say of it.

"As to the general principles which alone will lead us to financial security, I, for my part, have for years past had no doubt. On more than one occasion I have publicly declared what I believe on this point, and there can be no impropriety if I declare it once more now; but I beg the Council to understand that neither the Government nor any member of the Government except myself is in any way responsible for anything that I am now about to say. I give my personal opinions on this point for what they may be worth, and I hope no one will attribute to them an authority to which they make no pretension. It has been my firm conviction for years past that we shall never put our finances into order by the imposition of a heavy income-tax, by a succession-duty, by a tobacco-tax or by any other form of imperial taxation which has ever been suggested. I am convinced that it is idle to suppose that

financial safety can be obtained by any such means. I have already acknowledged the immense improvement made in our accounts and the preparation of our estimates, but it is clear that we want something more. No improvement of accounts and estimates, however necessary and important in themselves, will ever enable us to remedy, by themselves, the present unsatisfactory condition of our finances. I am satisfied that there is only one remedy possible, and I believe its efficacy to be certain. If any one wishes to know what that remedy is, let him read the debates which took place only a few weeks ago in the Council of the Governor of Madras on the Bills to provide funds for expenditure on objects of local public utility and improvement.

"I can hardly express too strongly my sense of the value of the service that the Government of Madras has rendered to India by the introduction of these measures, and by the declarations which His Excellency the Governor and the most eminent members of his Government have made on the policy on which those measures are founded. The Madras Government has set an example which I sincerely hope may be followed in all parts of India.

"In the course of the debate on the income-tax, which took place on the 19th of November last, I took occasion to say that there were two reforms without which it appeared to me our financial position would never be placed on a satisfactory basis. The first was the necessity of carrying out the principle that imperial revenues should not be expended for purely local purposes; that local roads, schools, works of sanitary improvement, and so forth, must be provided for from local sources and not from the income of the State. I said that the neglect of this principle had been, at the same time, a fruitful cause of our financial difficulties and a constant obstacle to the real progress of the country, and that it was a principle, the persistent neglect of which would lead the finances of the richest country in the world to inevitable ruin.

"The Madras Government has virtually admitted the principle thus asserted. It has admitted that the time is coming when local funds, not imperial revenues, should make provision for local roads, schools, sanitary works, dispensaries, hospitals, minor civil buildings and the like. The Hon'ble Mr. Arbuthnot, who introduced these measures, did me the honour to quote the passage to which I have just referred, and he declared it to be in accordance with the principles on which the proposals of the Madras Government were based. I am convinced that it is only by carrying out this principle that we shall succeed in placing our finances in a satisfactory state. But there

is one condition without which success will be impossible, and without which the attempt to transfer local burdens from imperial to local resources will do more harm than good. This is the condition to which the Hon'ble Mr. Chapman just now adverted in another form, and to which I also adverted in the debate which took place in November last. I then urged the necessity of giving to the Local Governments, with whom the actual administration of nearly the whole of India rests, and without whose co-operation no real economy is possible, some real incentives for maintaining an equilibrium between income and expenditure, and for placing a check on the constantly increasing demands on the general revenue of the empire. These demands, as I said before, are frequently of such a character that they cannot be refused, and the only way in which they can be met is by transferring to the Local Governments the responsibility of meeting them, and giving to those Governments the means of meeting them. Until every Local Government has a certain income of its own, out of which (subject of course to such general rules and such general control on the part of the Imperial Government as may be necessary) it has to provide for a certain portion of the public expenditure, I feel satisfied that our finances will never be put into a satisfactory condition. These two matters, the transfer of certain charges from Imperial to Local Funds, and the giving to the Local Governments powers and responsibilities which they do not now possess, are essentially connected. If we deal with them properly and together, we shall find the way out of our present difficulties; but if we attempt simply to throw off imperial burdens by transferring them from Imperial to Local Funds, we shall meet with every kind of opposition. If, on the other hand, while we obtain relief for the imperial revenues, we give to the Local Governments that reasonable control over their own expenditure, and free them from that vexatious interference in matters of detail, of which they now complain so bitterly and reasonably, I believe that we shall receive cordial co-operation in the serious work before us. My conviction is, that our financial system requires radical and fundamental changes, and I believe that one inevitable and most desirable result of such changes will be, that we shall then obtain, as a natural consequence, a more equitable distribution of the public burdens. We shall then, I hope, find that certain great classes which now almost entirely escape both imperial and local taxation, will be made to contribute towards meeting charges which now press heavily on the revenues of the empire, and which ought to be provided for from local resources. I confess (to give only one example of what I mean) that I cannot think without feelings of extreme dissatisfaction that the classes on whose industry and intelligence the progress

of the country mainly depends, should now be forced to pay a heavy income-tax and customs-duties for the purpose of making roads and schools in the interior of Bengal, and that they should thus be forced to relieve the landlords of the richest and least heavily taxed province in India from the necessity of discharging their duties towards the poorer classes of their countrymen. It would be easy to give other illustrations to show the injustice which follows from our existing system, under which we strive to meet, from imperial revenues, the local wants of this vast country."

Major General the Hon'ble SIR HENRY DURAND—"The Hon'ble Mr. Bullen Smith has done me the honour to refer to what fell from me in the course of the debate in November last. On that occasion, when my Hon'ble Colleague, Sir Richard Temple, imposed an augmented income-tax and an augmented salt-tax, I said that I concurred in the imposition of such an income-tax for reasons which I specified. I said that, when the income-tax was first imposed, it was distinctly stated that it was a purely temporary tax; that when it was re-imposed by Mr. Laing it was regarded as a purely temporary tax; and finally, in fulfilment of that pledge, Sir Charles Trevelyan removed it as a tax not fit for ordinary purposes—not suited to anything but a State emergency. At the same time I entirely agreed with His Highness the Mahárájá of Jaypúr—and I do not retract one syllable of what I then said—that the income-tax as a tax was, as the Mahárájá said, odious to the country, unsuited to the people, and very poor in its return. Therefore, I entirely concurred with the Mahárájá of Jaypúr, and, at the same time that I felt in that manner towards the tax and towards its incidence, nevertheless I felt bound to support it, simply because misfortunes had fallen suddenly on us, with a rapidity and force for which no one was prepared, and it was very difficult to meet such an emergency on the spur of the moment in a manner more adapted to my own views. Therefore, as a case of pure necessity, I supported the measure. Well, on the present occasion I have very much the same reasons for supporting what is now done. Although I feel that, in the course of six months, there has been added to taxation an amount about equal to what Mr. Wilson imposed, and that, in adding that taxation in the short space of six months, it adds very much to the burdens of those on whom it falls; still I cannot but bear in mind that when a financial policy is in full swing, it is extremely difficult for the Financial Member suddenly to alter and as suddenly to reverse it. The fact is that, when the gear of financial machinery is in work, it is no easy job at once to alter it. And therefore, on the

present occasion, for the same reasons for which I then supported the tax—although I am as hostile as ever to it, for I see no reason in the course of six months to change my opinion that it is only properly a war-tax and should be reserved for very great emergencies—I feel bound to support the imposition of an addition to the income-tax. In saying this, I feel that a very great deal has fallen from the Hon'ble Messrs. Bullen Smith, Cowie and Chapman with which I entirely concur. Of course, in matters of Finance we act very much as in matters of war. I suppose no two generals would fight a battle in the same way, and possibly no two men will deal with a financial difficulty in the same way. I dare say most of us have our own theories; still, considering the circumstances and difficulties which surround our Hon'ble Colleague in this instance, and also bearing in mind how very moderate is the amount which he calculates on as a surplus, how he has limited the taxation which he imposes, which is barely absolutely enough to cover the deficit, the anxiety he has evinced not to impose more than what is absolutely necessary is beyond dispute.

"There are many points on which I might touch in connection with this small surplus; but I do not, for some reasons, feel quite sure that I shall be wise in going much further than what I have done. Although His Excellency the President particularly invited the members of his Council, charged with the supervision of the different Departments, to give public expression to the financial state and prospects of their Departments, and although I myself should have no hesitation in doing so with respect to the particular Department in my charge; yet, whilst admitting fully the power of the Governor General to suspend the Rules of this Council, I cannot forget that the Rules of the Council are in no way changed, and that there is a very stringent restraint put on the debates and discussions that may take place in this Council. Even if I could use the suspension of the Rules in this way as a direct justification for what I might say with respect to the financial affairs of the Army and the reductions and retrenchments contemplated, I cannot but feel that there are other matters which put a still further restraint on the Military Member of the Council. At the present moment, questions of Army reduction and Army changes have gone before Parliament under the direction of Her Majesty's Secretary of State for War. The Council will see that it is perfectly impossible, in a matter so complex and so vast as the organization of the Army, that there should be perfect unanimity on the changes which can be effected with a view to retrenchment without touching efficiency: also, bearing in mind the differences which arise from regarding the subject from such distinct points of view as may occur to the mind of the Secretary of State for War, charged with imperial con-

siderations, and having enormous responsibilities laid on him; bearing in mind how great is the responsibility, and that, comparatively, we are in a position of subordination, I think that all I can do is to assure you how great the labour has been, how earnest, how searching, and how uncompromising, with a view to secure the utmost amount of Army reduction compatible with perfect efficiency and general security. I could, without difficulty, make an exposition which would not only bear out our earnest endeavours to carry out the commands of the Secretary of State with a view to reduction, but also prove that my Hon'ble Colleague, when he has put before the country and the public this estimate, in which he comes forward with an extremely moderate surplus and touches very little on what may possibly accrue from military economies, how moderate and cautious has been the financial estimate put before the Council. I shall abstain from following that course for reasons I have already stated. Many of these communications are at present before Her Majesty's Government up to the present moment; as to several of those communications we have received nothing in the shape of the views of Her Majesty's Government. We are therefore in a state of suspense, but we are perfectly ready to carry out whatever is directed, consistent with the safety and political security of the country and the thorough efficiency of the whole Army.

"I should have felt inclined, in connection with various matters which my Hon'ble friend Mr. Strachey has brought forward, to continue to tax the time of the Council with something more in the way of observations, but with regard to many of these subjects we are not in a position to deal with them. For instance, Sir R. Alcock's treaty, which affects our Opium, is at present before Her Majesty's Government, and it would be hazardous here to express opinions. In fact, I am not quite sure that the Legislative Council is either the proper or the best place to discuss questions touching the constitution of the Government and the organization of the Army. I feel an extreme delicacy in accepting the privilege offered by your Excellency. I think such delicate questions are more securely considered in the Executive Council, and that the rules laid down for the Legislative Council do not favour general disquisitions. But of this I am sure that there will be no want, on the part of the Government, not only to endeavour in every branch, in every Department, to strive to secure reforms and economy at the earliest possible date, but also to repose the most entire confidence in every subordinate Government, and in every subordinate Administration, that they will heartily and cordially assist in the labours of the Supreme Government.

"There is just one point I should like to touch upon, because it is in connection with what I on a previous occasion mentioned. Sir Richard Temple, in his statement, notices that the desire has been often expressed that there should be

promulgated, annually, correct and detailed accounts of loans for reproductive works and of their application. I somewhat regret that such an account cannot accompany this statement. I look on it as of great importance; for when we are spending large sums on Railways, Canals, and every form of reproductive works, great care is necessary that we should enjoy the confidence of the money-market by showing that the money is not only expended, but that it is expended on reproductive works. I am anxious to see that account in full detail, showing works past, works present, the amounts expended, and the returns on the works; so that there shall be a clear and definite conception as to what works are really reproductive works, what are partially reproductive, and what are only nominally so: Now I see no difference, in a large class of these works, between ordinary and extraordinary; therefore, I am extremely anxious that that account should come forth as early, and in details as full, as possible, so that the data should be before capitalists, and they could, if they took the trouble, be perfectly certain what we were doing, and on what security they were lending their money."

The Hon'ble SIR RICHARD TEMPLE—"I shall follow the example of my Hon'ble Colleague who has just spoken (Sir H. Durand), and ask the Council to excuse me when I decline to enter into the many questions of policy which have found place in this debate, but which are fitted for the Executive rather than the Legislative Council. I shall confine myself to the Income Tax Bill which is now before the Legislative Council, and shall advert to the salient points made by the speakers who have preceded me in reference thereto, following the order of the speeches.

"The first speaker, the Hon'ble Mr. F. S. Chapman, said that, having found the last Opium-estimate to fail, we now run to the opposite extreme in framing the present estimate of Bengal Opium. This can only mean that the present estimate is too low, and that the unduly low estimate of Opium is one cause of the necessity for imposing the income-tax. Since uttering that opinion the Hon'ble gentleman will have heard the opinion of the speaker who followed him, Mr. Bullen Smith. Now, from his position in the mercantile world, Mr. Bullen Smith is an authority on this subject; and he has told us that this estimate is not at all too low, and is, if anything, not quite low enough. Would that I could think that this estimate will prove much too low! While we are debating here, advices are coming in from China, which show that the decline anticipated by that estimate is but too surely continuing, and is likely to continue further. With such a prospect before us, our only consolation is that we have duly provided for such a decline. The prices may still go on falling month by month; they may drop gradually from Rs. 1,100 or 1,090 a chest to Rs. 860, and still

our estimate may be realized. I appeal to every merchant who knows this trade as to whether the contingency of such a fall is not sufficiently probable to require to be looked at in the face, and to be considered in the estimate. And I venture to deny my Hon'ble friend's allegation that I have rushed into any extreme in the estimate of Bengal Opium. Further, as the Hon'ble gentleman comes from Bombay, he must be aware that I have still greater uncertainties to provide for in respect to the Malwa or Bombay Opium. Did I not prove in my financial statement that the proverbial uncertainty of Opium culminates in the doubts which surround the Opium-trade of Bombay? Have we not in 1868-69 received little when we should have received much; and in 1869-70 much when we should have received less? Do not the fluctuations of that trade occur in inverse ratio to all probabilities? But looking to the circumstances of that trade, to the unfavourable accounts of the crops—accounts received on the eve of the Budget—I say that if any prediction about Malwa Opium could be justified, it would be this, that there will be some decline.

"Then the Hon'ble gentleman remarked that it was not creditable to the Government of India that deficits should have remained so long undiscovered. But did they remain undiscovered? As the Hon'ble gentleman was not in this Council when my Budget of 1869 was produced, I may remind him that the whole burden of that statement, from beginning to end, was the existence of deficit extending over several years. I exhausted many forms of explanation in demonstrating the deficits. In the year which was drawing to its close when I made that statement, the actual deficit turned out greater than the deficit estimated, by reason of special circumstances which could not be known till the year had actually closed. But did the excess of deficit remain long undiscovered? Not at all. It was known within a few weeks, as fast as the information could come by post or telegraph. Here, again, I must deny my Hon'ble friend's allegation of deficits remaining undiscovered.

"The Hon'ble gentleman then alludes to insufficiency in the reductions of expenditure. Of course, he cannot but acknowledge the reductions I show in the Army and the Public Works. But he allows no credit for these reductions, which he says are effected by a stroke of the pen! Why, I cannot conceive an expression more inapplicable than this to military reductions. Does he think that such an interest as the military defence of the Empire can be thus lightly dealt with? Does he not know that, of all possible reductions, military reductions are those which demand the gravest thought, the most laborious consideration on the part of the Government? By that remark he does scant justice to the efforts we have made in order to obtain even that modicum of

financial result which has now been displayed. And, as regards Public Works does he suppose that it has cost us no effort, no sacrifice, to stop so many important works, to check so many material improvements?

"Then the Hon'ble gentleman says that I ought to have shown more reductions in the Civil Departments, or to have explained what is intended in this direction. But surely he must know, being himself connected with one of the Local Governments, that, as regards civil reductions, the Local Governments have to be consulted; that the civil establishments are bound up with a variety of local interests; that such reductions in detail are most difficult for the Supreme Government to arrange. And what form would he wish large reduction to take? Would he wish to reduce the salaries of the Civil Service, or to discharge subordinate establishments, or to abolish important appointments, or to close some courts, or to cheapen prison-discipline, or to retard education? But this Council well knows how difficult it is to accomplish much reduction in these respects at a period when public opinion demands administrative reform and general improvement, and is, in effect, constantly requiring us to increase, rather than to reduce, expenditure. Despite of efforts for reduction in these Departments, every practical man is aware that this cannot be effected speedily. In one respect only is considerable retrenchment immediately practicable, namely Police, and here we do show real reduction. Besides, I explained in my financial statement on Saturday last that, by various civil reductions, we had gained nearly a quarter of a million. And that this has been effected always with trouble, and sometimes at the risk of causing discontent in many branches of the service, is too well known to require description here.

"But if the Hon'ble gentleman implies, and I think he does imply, that the Government have been remiss in this matter, then I must remind him of what he said in this very speech, and in a recent speech on the 12th of March last, in which he dwelt on what he deemed the vexatious efforts of the Financial Department to cut down existing expenditure, and to refuse all new and proposed expenditure. I really cannot understand how we are to be simultaneously chargeable with remissness and with over-zeal.

"As regards the income-tax, the Hon'ble gentleman thinks that the traders might be got at in a more direct manner. But what manner can be more direct than an income-tax, he does not indicate, nor can I imagine. He says it would be simpler to tax officials by subjecting them at once to deduction of salary. But this is precisely the method which is already adopted. He considers it unjust to subject our own countrymen specially to this impost. But they are *not* specially subjected; they are so subjected in common with their Native

fellow-subjects. He remarks that the income-tax-paying classes already contribute a proportionably large part of the customs-revenue; but of this the other classes also contribute a fair and full share. As regards the agricultural classes, he thinks that it would be better, instead of assessing them to income-tax, to raise their land-revenue at once. I heard this with surprise; how can a member of this Council, so experienced as my Hon'ble friend, speak of such a thing as the enhancing of land-revenue in the teeth of settlement-engagements to the contrary?

"I am told that the income-tax is odious, unjust, unequal and unproductive. As to its odiousness I need not offer remark, as each member of this Council can judge for himself. But as to its injustice or inequality, I say that, on the contrary, despite imperfections, there is an element of justice and equality in the measure which forms one of its principal recommendations. As to its alleged unproductiveness, I need only observe that, since 1860, it has (including license-tax) first and last brought nearly eleven millions sterling into our exchequer up to date, and that two millions are expected from it in the current year. I should rather say that it has proved a productive tax.

"I am not sure whether I understood rightly the Hon'ble gentleman's remarks about the income-tax affecting the value of the public securities. But this much I may remark, that, in India, the funds usually do rise after the introduction of an income-tax, because people see that the Government is resolved to pay its way, and possesses the power to carry out that resolution. After the first income-tax in 1860, the funds rose; they stood higher than ever after the income-tax of 1869, and at this moment they are again rising.

"I pass on to the speech of the Hon'ble Mr. Bullen Smith, and I must acknowledge the just and considerate manner in which he alluded to the labours and services of the Financial Department.

"He reminds us that, in November last, he voted for an income-tax on account of the proved necessity which existed. That, indeed, is the precise ground on which I ask him to vote for it now. I gather, however, that he thinks that the necessity hardly exists now or has become mitigated. But in fact it still exists, and that, too, in an aggravated form. The Opium difficulty, great in November last, is greater still now. The trade, depressed in November, is still depressed. The reductions of expenditure, commenced before November to avert deficit, have been carried on to an extent fully equal to our anticipations; and still there would be deficit without fresh income-tax. In short, the continued existence of necessity is indisputable.

"The Hon'ble gentleman mentions the expectation he had that the extra impost would end with 1869-70, and his astonishment at the new demand

now made. I have observed it stated, too, beyond the walls of this Chamber that some assurance in some sort had been given by Government to the effect that the additional tax would be soon discontinued. I am not aware of any such assurance. And certainly I gave none such, either directly or indirectly, either in March or in November 1869.

"He urges that the income-tax should be a measure of last resort in the direst need. I know that this view is often held, but I cannot give my adhesion to it. On the contrary, I say that, so long as the rate is moderate, the tax is an excellent one; that many other of our taxes are far more objectionable. I admit that the rate now proposed is high, but I prefer even this to several other taxes which have been proposed; and I should regard some of these latter as a last resource, to be adopted after the high income-tax had been tried and found insufficient. In other words, I distinctly prefer, in the first instance at least, the high income-tax to those alternative proposals.

"The Hon'ble gentleman, accepting a definition of mine to the effect that the income-tax falls on certain classes only, asks, why should these be selected to bear the burden? I answer, because these classes are the richest and the best able to bear the burden.

"Then, he draws a touching picture of the straits to which the middle classes are driven in order to make both ends meet, and asks, how can they bear income-tax? But it does not occur to him to consider that, if the middle classes do not pay, some other classes must. Then, what classes? why, manifestly, the poorer classes. But their straits are still more severe: their difficulties in making both ends meet must be greater still. And they deserve pity even more than the classes above them. And yet it is to the poorer classes that my Hon'ble friend's policy would transfer the burden.

"The Hon'ble gentleman reminds me very justly of the representations made to me some months ago by the Chamber of Commerce regarding the falling-off of the rice-trade, and the apparent loss of the China rice-trade, as reasons for remitting the export-duties, which duties, nevertheless, I propose to retain. Since that time, however, the trade has improved generally, and an exportation to China has begun again. He adds that such duties do not afford a foundation whereon a financier should build. But I did not lay this foundation, nor have I built upon it. I found these duties existing, indeed of long standing. Is there a sufficient case for remitting them at a time of difficulty? This is the practical question, apart from all other considerations. Herein the main point is whether these duties are *per se* injuring the trade. I say that, as yet, looking to the statistics of exportation, to the circumstances of the trade, to the range of prices, to the state of foreign

markets, no such injury is proved to have been caused by the duties. Whenever such injury can be shown, I shall be prepared to reconsider the question.

"But as he objects to the income-tax, the Hon'ble gentleman feels that he must propose something in its stead; and what is it that he proposes? Why, he proposes to defray the expenditure for building barracks by means of terminable loans. This, of course, is nothing more than staving-off difficulties by borrowing, and borrowing too in an objectionable form. Simple borrowing is perhaps too hollow an expedient to be even proposed. So these loans are to be terminable. But what if we were unable to discharge them on their termination? The difficulty would only recur in a more aggravated form. Besides, the Government of India last year distinctly declared that it would not borrow for barracks; it gave reasons for that declaration; it added that this declaration was made with the approval of Her Majesty's Government. Are we so dead to all sense of consistency as within one year to recede from declarations so announced? My Hon'ble friend thinks that this generation should not pay for the barracks. And why not? Are we not enjoying the benefits of works paid for by those who went before us? Will not those who come after us have plenty of works to pay for without paying for our works? Indeed, it is but too easy to foresee that, at the rate at which improvement is going on, they will have as much as or more than they can do, to pay for their own works. The best principle is that each generation should, as fully as possible, pay for what it orders.

"I next advert to the speech of the Hon'ble Mr. Cowie. He says that I ought to have proposed either a tobacco-tax or a succession-duty. He can hardly be unaware that both those taxes have been repeatedly considered. And indeed they are still worthy of consideration. He has doubtless seen the voluminous printed papers on these subjects. But, as regards a succession-tax, it would be wholly insufficient to meet the difficulty. Indeed, its amount would be so precarious that I could not have estimated any figure worth estimating, for the first year especially. A tobacco-tax would yield something considerable no doubt. But then, to substitute this for an income-tax in this emergency would be to shift the burden from the rich to the poor. Do not the poor pay enough already in this country? Here indeed lies the gist of the controversy. Here is the emergency, here is the burden. How is the burden to be borne? I say it should be borne by the rich and the comparatively well-to-do. Those who oppose me say that it should be borne by the poorer classes. This Council can judge between us. We have not so much fear of injustice being done to those classes who have wealth and intelligence—who, at the very least, possess means greater than those of the average population—who can

always make their voices heard through a Free Press, both English and vernacular—who are to some extent represented in this Council. They are capable of guarding their just interests. But it is for the Government of India to watch over the interests of all classes, high and low, and, among other things, to see that undue burdens do not fall on those poorer and humbler classes who will submit like dumb animals, as it were, and who cannot make themselves heard.

"The Hon'ble gentleman then urges that we might obtain more revenue by revising the permanent settlement of Bengal. What more can I say than that this would involve a breach of faith.

"I shall now advert to the speech of my Hon'ble Colleague Mr. Strachey. He animadverted on the discrepancies which have often occurred in India between estimates and actuals, and appeared to think that one cause of extravagance has been the too favorable construction put from time to time on the facts and figures by the Financial Department. I am not myself prepared to admit this altogether as regards the past; and certainly, as regards the present and immediately preceding periods, my Department has never ceased to urge on all parties concerned the necessity of reducing expenditure. At all events, whatever we may or may not have told you in the past, we tell you now that, however difficult it may be to reduce expenditure, yet this must positively be effected, unless deficits and corresponding fiscal burdens are to be perpetuated. For two years and more, one main reason of the doubt as to whether we were in surplus or in deficit, arose from the controversy as to whether barracks and other items of Public Works expenditure should or should not be counted as extraordinary expenditure. As to the other discrepancies between actuals and estimates, on which my Hon'ble Colleague animadverted, I say that the only way of judging how far the Financial Department has or has not been free from blame is to refer to the items of discrepancy in detail, and to the causes of the same, as set forth year by year in the financial statements made to this Council. I should not at all shrink from such reference, knowing well that the differences are all more or less susceptible of explanation. It has more than once been pointed out in this Council that such discrepancies occur in other countries besides India; perhaps in all countries. Yet sure I am that in no country can the difficulties of correctly estimating be greater or indeed so great as in India. Not only have we to deal with a variety of Local Governments within the country itself, but we have to amalgamate the accounts kept in two countries, England and India. A large portion of the business and of the expenditure is conducted, not in this country itself, but thousands of miles away. Again, with a scatterred heterogeneous empire like this, often with much perplexity of interests and with many departmental

complications, and, above, all with frequent reforms or changes of system, peculiar cases run on pending over lengthened periods, and, on being determined, involve financial adjustments; and it is these sort of adjustments which often disturb our accounts and baffle our estimates. The many changes of late years have doubtless been beneficial, but they have had this drawback, that they have rendered the task of keeping our books and accounts straight extraordinarily difficult. That our officers and establishments have made no mistakes, is more than I could venture to say. But I affirm that, if successes be balanced against failures, and merits against demerits, the result will be found not otherwise than creditable to our Department. I do not say that my Hon'ble Colleague meant to infer that our financial officers had failed in their work. I hope indeed that he did not. For, if any such inference were to be implied or intended, no greater injustice could be done to a laborious and deserving body of public servants.

"My Hon'ble Colleague mentioned various things which the Financial Department ought to, and doubtless would, succeed in managing; adding that, if we were to fail therein, we should deserve all the evil that could be spoken of us. Now, I will make no absolute promise of any kind, either as to remission of burdens, or reduction of expenditure, or avoidance of discrepancies. I will promise nothing save this, that whatever financial trouble may arise, its causes and circumstances shall in due course be explicitly explained to this Council. I will not even express any hope, save this one, that whatever may betide, my Department will be found to have done its duty.

"My Hon'ble Colleague has stated his view to-day as to the financial advantage to be derived from changes in the financial relations between the Supreme and the Local Governments. I have already asked the Council to excuse me when I decline to enter into this subject, as I deprecate the discussion in this Council of matters which are under the consideration of the Executive Government. I shall only now remark that, as regards financial benefit, after obtaining greater financial independence than at present, the Local Governments would have no golden road open to them which is not open to them already, or which is not open now to the Supreme Government. The Local Governments, even with greater freedom than heretofore, could not materially improve the finances, except in one or all of three ways; either they must reduce expenditure, or they must improve existing sources of revenue, or else they must impose new taxation. There are no other ways save these. Now, as regards reduction of expenditure. I presume that they effect this already as well as they can; certainly as much as they would if they were more left to themselves. As regards the improvement of existing revenue, they doubtless do their duty herein already to the best of their ability. As regards

additional taxation, they certainly might do more in that way. But would such additional imposts prove to be always desirable? Would the people always escape from injury and exaction?

"I share the belief entertained by many authorities, that the lower classes have already got nearly as much taxation as they can properly bear. If the concession of financial freedom to the Local Governments were to lead to any considerable increase of local taxation, I should not regard the change of system as an unmixed good. I say this without at all prejudging the pending question as to a greater degree of 'localization' or 'decentralization' of Finance. I quite appreciate the excellence of the example recently set by the Madras Government in regard to municipal administration in the interior of the country; but we must not forget that, among other things, an example has been set of adding to taxation.

"The last speech which I have to notice is that of my Hon'ble Colleague, Sir Henry Durand. And here I must admit the fair consideration which, though consistently and conscientiously differing with me on some points of financial policy, he has shown towards my Department, and the just appreciation he has evinced of the difficulties with which I have been, and still am, surrounded.

"And now, to conclude. I have been charged with poverty of invention in not having invented anything save an income-tax wherewith to avert deficit. have heard the same phrase used several times by Honourable Members in the course of debate to-day. If this charge were at all correct, I might have hoped that my poverty would be enriched by fertility of suggestion from others. But, after all, what has actually been suggested? Why, a tobacco-tax, which would shift the burden from the rich to the poor; a succession-duty, which would yield nothing like enough to meet the difficulty; a re-arrangement of the perpetual settlement, which would involve a breach of faith: and a borrowing, which would render extrication from our difficulties almost impossible! Reviewing the alternative courses suggested, I certainly cling to my preference for the course we have actually adopted. As for borrowing, whether the loans be temporary or permanent, terminable or interminable, I regard that as the poorest of all resources. Compared with that, an income-tax is rich indeed! In short, the main points of our Finance are plain and simple enough, and no recondite devices are required for hitting them. One or other of three things is open to us, in order to preserve our Finance from pressing emergency. Either we may reduce our expenditure, or we may enhance our taxation, or we may borrow. Now; speaking in behalf of the Government of India, I say that, of the three, we prefer

the first, namely, reduction of expenditure, and will primarily attempt that; but failing that, we are sometimes driven to try the other, namely, additional taxation. But the third, namely, borrowing for the ordinary service of Government and for ordinary expenditure, we will *never* resort to so long as any reasonable resource may remain to us.

"I regret to find so many objections urged against our measures; but rather than multiply arguments in their defence, I would point to the stern facts as disclosed by the figures of the Budget. Those who differ with us may not to-day be convinced by our arguments; but I trust that they will ultimately be convinced, when they consider that, after deficits of several successive years—after improving the finance of the year just closed to the extent of a million and a half by our own direct action; after further improving, by similar action, the finance of the year now commencing to a further extent of a million and a half; after a total improvement of full three millions; after all these results obtained by increased income and reduced expenditure—we were still threatened with a deficit of one million and a third, which deficit we are forced to cover by additional income-tax."

His Excellency THE PRESIDENT—"I am not surprised at the various criticisms that have been made, and made with great ability and force, on the proposals which have been submitted to this Council.

"It is very easy to find fault with the imposition of any new or additional tax, but it is not so easy, in the face of great financial difficulty, to propose an efficient substitute; and in considering this question, we must bear in mind the fact that the finances of this great Empire, with which we are trying to deal, and which we are endeavouring to put upon a sound basis, have been, and are up to this moment, in an unsatisfactory condition. It has been repeatedly stated—but a great truth can hardly be stated too often—that from the year 1866 to the present time, we have been plunged in a chronic state of deficit. We have spent on ordinary expenditure, in those years, upwards of 6½ millions more than we ought to have done.

"Now, it is my opinion, and it is also the opinion of my colleagues, that, looking to the present position of this Government—looking to the vast interests we have at stake; looking at the mighty industrial undertakings which we have thought it our duty to commence, and which we intend to continue—it is our bounden duty, by every possible means, to remove ourselves at the earliest possible moment from this unfortunate position. I advisedly say that I do

not consider we can maintain our character as an Administration, that we cannot maintain our credit as a Government, and, more than that, that we should not be acting honestly to those whose interests we are bound to protect, if we do not, casting all other considerations to the winds, take the earliest opportunity of remedying what I may call this disastrous state of things. I would beg to remind the Council that, by the prompt action which we took at Simla last year, we have been able to reduce the deficit of this year to something like a sum of £652,000. The course of events has completely justified the somewhat arbitrary course then adopted.

"If we had not taken that step we should probably have been obliged last Saturday to announce to the public an actual deficit of upwards of a million and a half sterling.

"A good many windfalls have occurred during the present year, which were not expected. The balance of these is nearly half a million in our favour. Had it not been for these abnormal occurrences, we might have been in a state of deficit, at the end of the year just concluded, of something not very far from two millions and three-quarters sterling; it might indeed have been three millions.

"Surely any candid person, on consideration of these matters, must admit that to rescue the finances of a great country from such a condition as this, requires not only judgment and determination on the part of the Government, but great and heavy sacrifices on the part of the public.

"With regard to reduction of expenditure, I feel that it cannot be said that, during the limited time in which we have been engaged in these transactions, we have not done everything that lay in our power to meet our difficulties.

"In proof of this I would ask my colleagues to take this sheet in their hands and observe those items of expenditure in which the principal reductions have been effected, and also those heads in which increases have occurred. It will be found that the items of expenditure during the ensuing year in which probable increases will take place, are items over which the Government of India have little or no control, and that the items of expenditure where decrease has taken place are those over which the Government can exercise the greatest authority. Observe the increases.

"Take the first item, the Interest on the Funded Debt, which has increased to £270,000.

"This is an item over which the Government have absolutely no control.

"Land-revenue has risen to the small sum of £37,000. The smallness of the rise is to be attributed to unavoidable increment of salary:

"The large increase in the Forests, of £117,000, has taken place consequent on the desire of the Government to enhance the revenue derived therefrom.

"In the two great items of Salt and Opium, which amount to £103,000 and £164,000 respectively, the increased expenditure has been to a great extent in consequence of increased production and improvement in manufacturing, and of the measures that have been taken with a view to augment revenue from these sources.

"Under the head of Law and Justice, I believe that the increase of £178,000 which has taken place is mostly to be attributed to the increment in the salaries and addition to appointments of the officers engaged in those professions: over these, the Government have little or no control.

"The item for Superannuation, *viz.*, £126,681, is one which for some time must naturally be on the increase, according as the liberal pensions and superannuations which have for a series of years been granted to our services come into operation: also, as the number of offices increase, so will there be a proportionate increase in the charge for superannuation.

"The other great item for Railways, namely, £275,268, is an item over which we have no control.

"I think, therefore, this statement will show that those items of increase, which amount to a sum of £1,271,849, are items over which the Government can, at all events on the spur of the moment, really exercise no control whatever.

"Now, take the items in which reductions have been made, and you will see that they are the branches of expenditure over which the Government can easiest exercise authority.

"Take, first, the great reduction made in Police, of £120,000.

"This is principally owing to the representations which were made by the Supreme Government to the Local Governments, as to the absolute necessity of decreasing their expenditure.

"The other item of decrease of £731,000 in the Army has also been the result of absolute and very decisive action on the part of the Government of India.

"But the greatest item of reduction that has taken place during the past year, namely, £1,041,995, is that in the Public Works Department, Ordinary—that particular Department of the Government over which the Supreme Administration exercises the greatest control.

"Therefore, we find that, taking the larger heads, we have made a reduction, in these three great items over which we exercise authority, of £1,892,995, and you will see that it is a far greater reduction than the increase that has taken place in those heads over which we have absolutely no control.

"I wish to say a very few words with regard to the proposal the Government have made in reference to the Army.

"My Hon'ble Colleague, Sir Henry Durand, was perfectly justified in stating that it was impossible for him or any other member of the Government to enter at this moment into any general discussion on that question.

"Certain proposals were made to the Supreme Government, some of which were adopted, others disapproved of, others are still under consideration. And though I lament extremely, both for my own sake and the sake of the Government, that Sir Henry Durand is not in a position, as Military Member of this Council, to make a statement with regard to this matter, which, I believe, would be of very great value at this moment, and could be made by him with greater authority than perhaps by any other man in India, it will be seen that the reasons he has given for abstaining from doing so are sufficient, and that in the present state of the question it would be impossible for him to make that statement, which will be made hereafter, and which, when made, will, I hope, redound to the credit of this Government.

"I may state, however, this much. We have not proposed to decrease the numbers of the European Army by a single fighting man. Further, if our proposals are carried out, we shall put the European Artillery in a more efficient state at the end of the year than it is in now.

"In the Native Army we did not propose the reduction of a single man in those portions of the service where there is any apparent probability of military employment.

"We believe that in these proposals we have kept steadily in view the efficiency of the service and the safety of the Empire. We do not desire to keep a single soldier, European or Native, in our ranks more than necessity demands, and we object to retain, at an enormous cost, soldiers where we do not think they are absolutely indispensable for the

preservation of internal peace and for the defence of our borders. My object in making these remarks is to show that the Government of India is not omnipotent in all things; that, in those matters over which we have had real control, we have made those reductions which are matters of fiscal necessity and are compatible with the safety of the Empire.

"On the 10th September I wrote a Minute in the Public Works Department, suggesting a reduction of £297,000.

"A Resolution was subsequently issued in that Department, early in October, ordering the reduction, and on looking to the sheet, you will find that, in all probability, a saving in that Department will be effected of about £889,000.

"I am fully prepared to admit that many reductions thus made have been objectionable, and also that great sacrifices were made to carry them into effect; and it is impossible that so many useful works can be stopped suddenly without serious inconvenience and some loss; but I believe that the good which has been done is far greater than any evil which has occurred, and that unless some such arbitrary reduction had been made, we could not hope to attempt to meet the great financial difficulties with which we have to contend.

"With regard to the Army, I have been informed by the Military Department that, if the proposals which we had made had been carried out, the Military Estimate would stand this year at a sum of something like £12,093,037, instead of the item which we have at present, namely, £12,480,000.

"As Sir Henry Durand showed, it is impossible for us to enter into a discussion of this matter at this moment; but it is fair that the public should know that we believe that a sum less by £450,000 than the sum we shall have to pay this year would have been sufficient for the military service of the Empire.

"We are not without hope that, though certain of our proposals may be objected to, a financial result somewhat similar to that which I have mentioned may be ultimately obtained, but it can have little or no effect on the Budget of 1870-71.

"Enormous difficulties beset the question. I find no fault with the Home Government for the course they have taken; they have had other considerations to bear in mind beyond those of Indian financial convenience or necessity.

"Any alteration of the European Force in India necessitates, to a certain extent, changes in the organisation of the British Army, and therefore it is quite right that the Home Government should view the matter as a whole; and though we may not agree with them in many of the conclusions at which they have arrived, it must always take time to discuss any particular line of action with regard to the European Army in this country.

"We believe that we are right, and we hope that at no very distant time the principle upon which we have made our proposals with regard to the European Army will be accepted, and that the only thing which will be left for discussion between us and the authorities of the War Office will be questions of detail.

"I now wish to refer very briefly to a few of the objections that have been taken to the financial proposals of the Government.

"They have been replied to at considerable length by two or three of my Hon'ble Colleagues, but it is my duty also to refer to them.

"Two or three of my colleagues appear to entertain the opinion that there are means by which the finances of the country could be improved other than those which have been adopted by the Government. I believe that there are other means, and very good means too, but I do not think that any of those particular measures which have been suggested would tend to the desired effect.

"One Hon'ble Member proposes that, in the matter of salaries and allowances, we should begin from the top instead of the bottom. If this means a general reduction in the pay and allowances of the Indian servants of the Crown, then I say that I am not at present in favour of such a measure.

"But I am not aware that any satisfactory proposals have been made for the decrease of salaries, great or small.

"With regard to the reduction of appointments, I may say that almost the only reductions in this respect which have taken place are those of the Police, and now that this matter has been referred to, I should like to make one or two remarks, as very erroneous ideas seem to be generally prevalent with regard to the action of Government in this matter.

"A great deal of correspondence took place between the Government of India and the Local Governments on the subject of Police reduction. We made many suggestions as to how these necessary reductions might best be effected. These suggestions were much objected to in some instances by several

Local Governments. We told them, however, that they need not consider themselves bound specially to carry out the suggestions made, and that if the same financial results could be obtained in a manner more consonant with their views, and which did not interfere with the efficiency of the Force, we should be glad to consider them.

"The consequence was, that a reduction even greater than what we proposed in those various communications with the Local Governments took place.

"But what has been the personal effect of reduction in this branch of the service?

"We hear most lamentable stories of the great hardships which have been committed, and how numerous officials of long standing in the service have been sent adrift without any provision whatever.

"Let us ascertain the real facts of the case as regards the Police.

"All the reductions to which I have referred as having been carried out by the Local Governments affect altogether only 61 officers.

"Of this number, 39 have already been re-employed in various ways, 7 are waiting for re-employment, and the remainder, that is, the difference between 46 and 61, have not been recommended for re-employment. So that, in the matter of reduction of appointments, the Government of India cannot be accused of any harshness in the proceedings that have been taken in respect to the Police. Nearly every efficient officer has already been provided for.

"It has been said by one or two of my colleagues in the debate that, in their opinion, the Native traders could be got at in an easier manner than by the income-tax.

"It is very easy to say—'get at the Native trader'; but I am not sure that any proposals have been made for taxing this particular class in a fairer way than by an income-tax.

"It is thought that the Native traders can be reached by putting on direct taxes on articles of prime necessity, or by license-duties, and adopting other financial measures of a like kind; but I believe firmly, that if you want to make the Native trader pay his fair share of taxation, you can do it as well through a well regulated and rigidly assessed income-tax as in any other way.

"I am perfectly aware of the great objections that are urged to taxing trades and professions; they are objections that are incident to an income-tax in every

country, the main objection being that the rogue escapes while the honest man pays. I am afraid the evil must always remain, and can only be mitigated by careful administration.

"Then, a proposal has been made directly to enhance the land-revenue. I cannot conceive any recommendation that could be made of greater magnitude than this.

"An Hon'ble Member said that the proprietors of the Province of Bengal under permanent settlement do not pay their fair share of taxation.

"That may be the case, but I own that, though it is, in my opinion, quite proper to tax the land for local purposes—for roads, education, police, and the like—I believe no Administration would venture, in respect of imperial wants, to interfere with those settlements, as between the Government and the landed proprietors and occupiers, which have been in existence for so many years, have been the subject of such solemn contracts, and to which the faith and honour of the Government are pledged; and therefore I do say that, though there are additional charges which it is fair to put upon the land, yet any attempt to disregard the settlement and agreement with the occupiers and proprietors, for the purpose of increasing imperial resources, is a proposal which, in my opinion, ought not to be contemplated.

"The Hon'ble Mr. Bullen Smith made some very interesting remarks on these matters, and I must say that, though I disagree with the criticisms and the strictures which he uttered on the conduct of the Government with regard to the Budget, I listened to his speech with great pleasure, for I never heard opinions expressed with greater clearness, frankness and moderation.

"With regard to taking the duty off shawls, that is, financially speaking, a very small matter.

"The reason why this duty has been removed this year is owing to certain negotiations and treaty-engagements we have come to with the Mahárájá of Cashmere.

"As the duty on shawls has been levied hitherto, it operated as a transit-duty on the Cashmere fabric. We thought, therefore, after all we urged on our feudatory States in India on this subject, that we had no possible pretext for maintaining any duty, either in the shape of customs or excise, which could in the least degree partake of this character.

"There was an additional reason for taking this course. The Mahárájá of Cashmere has, with the greatest liberality, complied with our request for the opening up of a free trade between India and those territories which lie to the north of the Cashmere State; and so completely has he agreed to our proposals, that, during the ensuing year, we shall be able to appoint Commissioners to lay out the trade-route throughout the whole of these wide districts, from our border in Lahoul to the border of Turkistán.

"That route will be placed under the absolute control of Commissioners, one of whom will be appointed by the British Government, and one by the Mahárájá of Cashmere.

"He has disclaimed all intention of charging any duty on goods that travel by the demarcated road, and he has done more than that in consenting to the framing of such rules as will provide a certainty of peace and safety to all traders who pass along that route.

"The present Ruler of the Yarkand State has despatched an Envoy to the Government here; he is now in Calcutta. He has, on the part of his Government, expressed himself entirely satisfied with this arrangement, and promises that he will second our efforts as far as possible.

"He came with a particular request that a British officer should be deputed to visit the Ataligh Ghází during the ensuing summer, in order that these matters might be discussed, with a view to ascertaining how the trade between India and Turkistán might be improved.

"Therefore, this matter with regard to shawls, though it is of little financial importance, is, as you will see from what I have stated, of some political and commercial significance.

"With regard to the duty on the export of grain, all I can say is that, in considering these matters of finance, when we are asked to relieve suffering interests, we must first consider what the general financial necessities of the Empire are. If we look in other directions we may find duties even more objectionable than those we levy on home-grown corn. I believe the burdens we place on our own sugar, by the operation of the internal customs-laws, are less easily defended than even the export duty on rice. All I can say is, that I hope the day is not far distant when export-duties will cease to be a portion of our financial resources, for nothing can be more objectionable, either in principle or in practice, than these duties; and I believe that they throw a much heavier burden upon trade than they bring in to Government.

"The only other proposal made as a substitute for the income-tax is to lay a tax on tobacco.

"Now, it is quite true that, in many civilised countries, tobacco is considered to be a very proper object for taxation; but I must remind the Council that tobacco in India is really an absolute necessary of life, and that, if you put a tax upon the production of tobacco, you tax the two great necessaries of life in this country, namely, salt and tobacco: I am not prepared, even in the present state of our finances, to advocate the imposition of a burden upon such a prime necessary of life as that is. Well then, let us see how our present system of taxation falls on the people at large. Taking the Land-revenue.—It is quite true that the Land-revenue is paid to a great extent by proprietors, and it is very difficult to say what portion of it comes out of the pockets of the occupier; but we must all admit that a very large portion of it does come out of the pockets of the poor cultivator. I never will admit that the land-revenue is anything but a rent belonging to the State. Whether it be a tax, or whether it be a rate, the greater portion of it is paid by the poorer class.

"In our Customs, one article under that head, namely, the duty on cotton piece-goods, amounts to something like £800,000. That must be paid almost entirely by the poorer classes. The duty on salt, namely, £6,000,000, is also paid almost entirely by the masses. Seeing that these great items of revenue, too, are paid by the general population of the country, I own that I do not consider we should be justified, looking to that great fact, in placing, unless some very great national exigency required, any very heavy additional charge which would fall upon almost every individual throughout the country.

"These, then, are the principal objections to the recommendations that have been made from various quarters; and it really comes to this, that, as we are situated at present, unless some great radical change takes place in our whole financial system, there is no other resource, except the income-tax, of which we can avail ourselves at the present moment for extricating ourselves from the difficulties in which we have been placed: therefore, when my Hon'ble friend the Financial Member is twitted for want of invention and poverty of resource, I can only say that, after every possible proposition was discussed most fully in Council, we came to the conclusion that, however some of them may be fair subjects for consideration in the future, in the present crisis it would be impossible to adopt any of them with any hope of bringing in that amount to the Exchequer, during the present year, which is necessary to create anything like an equilibrium in our finances.

"If I am asked whether I think the main principles of future Budgets should be the same as the present, I would frankly confess that I do not think so, and I agree with Mr. Strachey that there is great room for improvement.

"With that view the Council will observe that we have increased the income-tax for the present year only, and if it is found necessary to continue it, either in a decreased form or in its present amount, it will involve the necessity of further legislation; but I believe that, if we ever hope to place our Imperial Finance upon a real sound and final basis, we shall have to take a course somewhat different from that which we have been hitherto following.

"In considering these great questions, we ought to endeavour to see whether we may not gradually and carefully import such principles into our Finance as will lay the foundation, at some future day—probably when we are all past and gone—of some such system of Local Finance as is adopted in every other civilised country in the world, and which I am not disinclined to believe has been practised from time to time in some of the districts in India.

"It would be very improper, and perhaps impossible, for me to say more upon this subject. Every man must be aware of the insufficiency of provision that is made in India for the great objects of education, for providing internal communications, for sanitation, for all those civil buildings which are necessary for the decent administration of justice and for many other public purposes. Everybody must be aware of this, and that, if it is attempted to carry out all these great objects, increased taxation is necessary. I believe that increased taxation would be much more palatable if it were levied under the control and sanction of local authorities, and if the people who paid it were made sensible, by daily experience, of the benefits they derived from such taxation. All I can say is, that if greater economy can be obtained in this way—if provision for increasing wants can be made; if its result should be to give greater and more freedom of action to Local Governments and District Authorities, and to relieve the Supreme Government of a large amount of work which I believe it can but inadequately perform—the question is well worthy of the consideration of every Administration and every Local Government, and will, I believe, when it comes to be understood, receive the general support of the country."

The Hon'ble Mr. Bullen Smith's amendment was put and negatived.

The Hon'ble Sir Richard Temple then moved that the Bill as amended by the Select Committee be passed.

The Motion was put and agreed to.

CUSTOMS' DUTIES BILL.

The Hon'ble SIR RICHARD TEMPLE presented the Report of the Select Committee on the Bill to amend the law relating to Customs' Duties. He said that the object of this Bill was to remove a number of petty articles from the Tariff. They were—Blacking, Carpets, Chemicals, China and Japan ware, Coach-builder's materials, Felt, Gold-leaf (Europe), Grass-cloth, Horns, Jute-manufactures, Lac, Marble (wrought, other than statuary), Shawls, Tallow and Grease, Telegraph-stores, Trunks and Boxes. The whole of these items at present brought in a very small amount of duty, and their retention in the Tariff seemed undesirable. The Statement of Objects and Reasons appended to the Bill was as follows :—

'The sixteen articles which this Bill proposes to strike out of Schedule A either bring in a very small amount of duty, or are subject to duty under other heads in the Tariff. When they are subject to duty under other heads of the Tariff, it is not intended to remit that duty but only to simplify the Tariff by cutting out superfluous heads.

'Galvanized iron is much more valuable than other iron. The Bill separates it from other iron in the Tariff.

'Beads and False Pearls are not always made of glass. Hence they have been removed from the head of Glass

'Matches to a considerable value are imported into India, and seem a fit article for the payment of import-duty.

'The export-duty on shawls acts as a transit-duty on Cashmere shawls exported from India. The Government of India are urging Native States to remit their transit-duties, hence it is desirable to strike this article out of the Tariff Shawls manufactured in British India will get the benefit of the exemption. The amount involved is small'

The Hon'ble SIR RICHARD TEMPLE applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the Report of the Select Committee be taken into consideration. He said that it ran thus :—

'We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations to which the Bill to amend the law relating to Customs' Duties was referred, have the honour to report that we have considered the Bill.

'We have saved Act No. XX of 1867, which provides for the transshipment, without duty, of goods arriving in steamers at Calcutta, Madras and Bombay.

'We have made no other changes and recommend that the Bill thus amended be passed.'

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTHERN INDIA CANAL AND DRAINAGE BILL.

Colonel the Hon'ble R. STRACHEY presented a preliminary Report of the Select Committee on the Bill to regulate the construction and maintenance of Public Works for Irrigation, Navigation and Drainage. He said that the Bill had not been taken into consideration in detail, but a revised draft had been put before the Select Committee, which they considered should be sent to the Local Governments and Administrations before the Bill was taken into consideration.

OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill for the repeal of certain obsolete enactments be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL moved the following amendment:—

That the following enactment be inserted in the Schedule, Part II:—

XVI of 1838.	Bombay—Judicial.	In section five the words "without further costs of stamps to the parties except on new exhibits if any such should be allowed to be filed," and from and including the words "but if an appeal" to the end of the section.

He said that the amendment was rendered expedient by a provision in the Court Fees' Act which had rendered the enactment obsolete.

The Hon'ble MR. STEPHEN expressed his approval of the amendment.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended be passed.

The Motion was put and agreed to.

HINDU WILLS BILL.

The Hon'ble Mr. Stephen moved that the Report of the Select Committee on the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns be taken into consideration. He said—"I am extremely sorry that the course of business renders it necessary that I should address the Council at this late hour. The Bill was under the consideration of the Council in the month of January last. On that occasion the Council determined, on the motion of the Hon'ble Mr. Cockerell, that the Bill should be referred back to the Select Committee for six weeks, in order that they should consider the propriety of extending its provisions to the Lower Provinces of Bengal. The Committee having presented their Report on that reference, it now becomes my duty to move that it be taken into consideration.

"The position of affairs in respect to this Bill is somewhat peculiar. I consider it necessary, on account of the great importance of the subject, and because the Bill relates to the Lower Provinces, where we are now sitting, to bring this matter to the notice of the Council before it leaves Calcutta for Simla. But for this circumstance, I should have thought it my duty to postpone the consideration of the Bill; for the Council has not as yet an absolutely complete set of materials upon which to form their opinion as to the question at issue. The matter was referred for consideration to the Lieutenant Governor of Bengal, who took steps for procuring the opinions of persons acquainted with the feelings of the people in such matters, and issued a circular on the subject. Several of the answers to that circular have not yet been received, and the Bengal Government itself has not yet expressed an opinion. On the other hand, an opposition to which I do not wish to attach too much weight, but which I am far from wishing to undervalue, has been excited in certain quarters against this Bill. The Select Committee received memorials drawn up by various persons; from a Body called the Bharatabershya Sonatona Dharma Rokhini Sobha; from the British Indian Association and others, and from a considerable number of persons who shared the views of that Association. Moreover, several of the district officers had reported that there was a considerable feeling among certain sections of the community against one particular provision of the Bill, that, namely, which relates to perpetuities. Under these circumstances, the Government have thought it best that I should not ask the Council immediately to pass the Bill. I ask them to take it into consideration, and when we have received the information to which I referred, then to proceed to the passing of the Bill. In particular, I think the Council has a right to an expression of opinion from the Government of Bengal. Mr. Cockerell has an amendment on the paper, and has suggested that, as a

large part of the Bill is unopposed, we might pass that part of it, omitting the section relating to perpetuities, and reserving to the Council the right to legislate hereafter on that subject. With regard to that, I put myself in the hands of the Council. I do not myself think that the course which Mr. Cockerell suggests is, on the whole, the one best suited to the public convenience; but I have no strong personal objection to the adoption of that course, provided always that it is fully understood that, in postponing the enactment of this particular section under these circumstances, it is not to be supposed that we have abandoned the opinions lately expressed by us on the subject of perpetuities, or that there shall be any objection, at a more convenient time, to pass an enactment on the subject. Whether, however, the one course or the other is adopted, I consider it necessary, at the expense of inflicting some inconvenience on my colleagues, to refer to the observations made on the Bill in the communications received by the Council, so as to show that they are founded on a misconception of the nature of the particular provision objected to, and if possible to induce those who have advanced opinions hostile to the Bill to change those opinions.

"But before I proceed to that point I must make a few remarks on one or two of the minor alterations suggested by the Committee. It was proposed to extend to the wills of Hindús that section (51) of the Succession Act which provides, in accordance with the English law, that legacies made to attesting witnesses shall be void. I propose to omit that provision, because a considerable number of those who have advised us on the subject state that it is the custom of Hindú society that a person interested in a will becomes an attesting witness, and that the effect of the enactment would be to render void a large number of legacies, and thus introduce great inconvenience and considerable discontent. The Committee think that that objection should prevail. We arrived at this conclusion with the greater readiness because the history of the English law on the subject shows that the provision is a vestige of a principle now generally exploded. The provision is founded on cases decided early in the eighteenth century. These cases decided that a person interested in establishing the validity of a will was an incompetent witness, and creditors, the payment of whose debts was provided for in the will, were regarded as interested and therefore as incompetent witnesses. Those decisions proceed on the old principle of excluding every witness who was interested in the subject under dispute. The law as laid down by the Judges was somewhat modified by an Act passed in George the Second's reign, and afterwards by the Wills' Act of 1838. There, it is enacted that the will itself shall be good, but that the interest under it of such an attesting witness shall be void, unless indeed he were interested as a creditor.

Independently of the Wills' Act of 1838, the general principle of rejecting the testimony of interested witnesses has been generally given up, and I do not know why this particular application of it was retained. Upon the whole, therefore, as the operation of that section of the Succession Act will cause inconvenience to Hindú testators and legatees according to the customs of the Hindús, and as the principle on which the section is founded is bad, there is no reason why it should be retained in the Bill.

"Another alteration occurs in the proviso relating to the effect of the proposed Act upon the testator's control over maintenance charged against his estate. We have so worded that provision of the Bill as to make it quite clear that, on the one hand, our intention is not to take away any power which the testator now possesses, of depriving particular individuals of maintenance, but on the other, to give the testator no additional power of deprivation. We wished, in short, to leave the whole Hindú law entirely untouched, and to leave all rights to maintenance as they stand.

"With these observations, I pass to the question of the prohibition of perpetuities, which has excited so much opposition. The section of the Succession Act on this point provides that gifts shall be void unless the property vests in some person within eighteen years after the conclusion of a life in being at the death of the testator. I may observe, to begin with, that this somewhat extends the testamentary power which, according to the last decision of the High Court, is possessed by Hindús in regard to making wills. Under these decisions a will is regarded as a gift. It is also held by the High Court that a gift must be made to a person in being; therefore, according to the latest authoritative exposition of the Hindú law and irrespective of the English law of perpetuities, a Hindú testator cannot make a gift by will to an unborn person. That is how the matter stands at present. It is true that an appeal has been preferred against that decision; but such is the established law at present. The section against perpetuities, which we propose to apply to Hindú wills, gives greater power to testators; for it allows a man to make a gift which is not to vest till eighteen years after the expiration of a life in being at the death of the testator. Since, then, the existing law of the land, as it has been expounded by the High Court, does not authorize gifts to unborn persons, whilst what we propose to substitute for it does admit of gifts to unborn persons, it is an indisputable fact that we propose to a certain extent to extend the power of testamentary disposition of property, as declared by the High Court to exist at present under the Hindú law.

"I have already mentioned the character of the opposition to this provision. Part of it is due either to misconception or misrepresentation. This admits of the clearest possible proof.

"In the first place, let me say what the Bill does not propose to do. It does not propose to interfere with deeds of gift. It does not propose to interfere, for reasons to which I shall presently refer, with charitable or religious bequests. It does not propose to interfere in the slightest degree with the law of adoption or inheritance. And that leads me to the subject of the misconception and misrepresentation abroad in respect to this Bill. I may first refer to the memorial of the Bharatabershya Sonatona Dharma Rokhini Sobha. That memorial contains the following passage—

'The principle on which the English law has proceeded, in refusing to permit the creation of perpetuities, is that, according to that law, no man is the absolute owner of property to do with it as he pleases. The exact opposite of this principle is the rule of Hindú law.

* * * * * * * * * *

'And it is according to that law, as well as to the law of adoption, that a man destitute of male issue authorises his wife to adopt a son, another on failure of the first, a third on failure of the second, and so on, and delays the vesting of his property till the last adoption; and even in anticipation of premature death of his begotten son, though surviving him, a Hindú is allowed by his law to permit his wife to adopt a son on his (the begotten son's) demise without male issue, and, failing him, to adopt another son and successor in his stead (4§). Consequently, the proposed enactment, by which it would be impossible for a Hindú to delay the vesting of property bequeathed by him beyond the life-time of a person living at the testator's decease and the minority (eighteen years) of some person in existence at the expiration of that period, will deprive the Hindú subjects of Her Gracious Majesty to provide for the continuance of the presentation of the oblation of food and libation of water by means of adoption, which is enjoined by the *Sástras* as an act obligatory to be performed, not optionally, but *positively*, by every Hindú destitute, or likely to be destitute, of male issue in the male line (5||); as, henceforward, no Hindú testator shall be at liberty to delay the vesting of his property in his adopted son or lastly adopted son, who does not exist at the time of the testator's death, but may be adopted several years after his demise. Thus, the proposed enactment is not only an encroachment upon the Hindú law and religion, but is calculated to strike at the foundation of one of the essential parts of the ordinary as well as the transcendent law of the Hindús in general.'

"I am very glad that that statement is made, because it enables me to contradict it emphatically, and to expose the misconception upon which it proceeds. Nothing could be further from the intention of the Governor General in Council than to interfere in any way with the law of adoption. But this

Bill, as it stands, has no reference whatever to that subject. Even if it is possible to create, by adoption—though I do not believe that it is—a species of perpetuity, this Bill will not interfere with it; for no provision of the Bill has said anything about adoption.

"If, however, the Bill did impose upon the power of adoption the limits which it imposes upon gifts by will, it would not narrow the power of adoption, for that power could not be exercised at a period so distant as that to which the vesting of a gift by will may, under this Bill, be deferred. Under the supposition in question, an adoption might be made at any time during the life of a widow or within eighteen years afterwards, and, during all this period, any number of successive adoptions might be made. This, I apprehend, would go beyond the existing Hindú law. By that law, as I understand, adoption must be of a living person by a living person; therefore, if the widow has power to adopt fifty persons in succession, all those persons must be living in order to be adopted, and she must of course be alive in order to adopt. I have the fullest confidence in the correctness of these assertions, but the point is one on which the Committee wish to avoid every possible risk of misconstruction or misapprehension. We have accordingly, much against the will of those who are responsible for the artistic merits of the draft, inserted an express provision which is in these words:—'Nothing herein contained shall affect any law of adoption or intestate succession.'

"And now I come to the question of perpetuities. I addressed the Council at great length on this subject two months ago. I have nothing to take from what I then said, but I have something to add to it in order to remove misunderstandings. The main question which has to be considered is this. How is the section which we propose to apply to Hindú wills related to the existing Hindú law with respect to the creation of perpetuities *by will?* I lay particular emphasis on the words 'by will,' because I find that a great deal was made of the omission of that word in one of my former observations on this subject. I am speaking, not of perpetuities in general—not of perpetuities created by deed, nor of perpetuities created by gift *inter vivos*—but of perpetuities created by will; that is, by an instrument ambulatory during the life of the testator, and which becomes irrevocable only at his death. Having gone through all the authorities on this subject, I am happy to say that the real difference between me and those who have criticised this measure with such warmth and spirit is small. I affirm that the Hindú law nowhere confers the power to create a testamentary perpetuity; they affirm that it nowhere prohibits the creation of testamentary perpetuities; and therefore,

the true question between us is, what inference is to be drawn from the silence of the Hindú law on the subject? I affirm that the inference is, that testamentary perpetuities should be forbidden; they affirm that the inference is, that they should be permitted.

"In the first place, I must make good my assertion that there is no difference between us as to the fact that there is no authority by Hindú law for the creation of perpetuities, except in the single case of perpetuities by gift for religious or charitable purposes.

"I will proceed to give, shortly, the evidence in support of that assertion; and the first witness I shall produce is one of the gentlemen to whom the Government of Bengal applied for information on this subject, Bábu Bhudeb Mukerjee, an Inspector of Schools in this neighbourhood, of whom I will say that no one can read his note on this subject without seeing that he is a man of marked ability and knowledge. I say this with the more confidence because he differs from me in his conclusions, and thinks that it will be better to permit perpetuities. He says, in the first place, that wills have no distinct place in Hindú law, and he adds that the state of the Hindú law on the subject of wills is exceedingly rudimentary, and then goes on to say—

'The Bill proposes to apply sections 100 to 103 to Hindú wills. These limit the testator's power. But the power limited is not in measure, but in time. They make perpetuities void. Strong objections have been raised to these sections. I shall remark upon them in brief as follows. That perpetuities are not disallowed by Hindú Law is apparent from what has been said with respect to the very rudimentary condition of that law on the subject of wills. There is nothing in Hindú law either for or against perpetuities.'

"There you have an express assertion that the Hindú law says nothing on the subject.

"Next I refer to Pandit Iswara Chandra Surma. He says—

'I am aware that the creation of perpetuities is not in unison with the spirit of the advanced civilization of the West. Personally, I am opposed to it. But when it is sanctioned by the *Sástras*, and the community at large are very much in its favour, and when no evil has been known to have resulted from its operations, it does not appear to me that there are sufficient grounds for legislation on the subject.'

"When this opinion was received, as he referred to the *Sástras* and gave no authority, he was asked by Mr. Eden, the Secretary to the Government of Bengal, to state what *Sástras* he referred to. He then says—

'I do not think that there is any distinct text expressly sanctioning the creation of perpetuities; but in the face of the rulings above alluded to, no such text is necessary, for those rulings constitute the absolute law for Bengal.'

"He then quotes the authorities to which he refers as follows—

'It should not be alleged that, by the texts of Vyása ('A single partner may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family. Separated kinsmen, as those who are unseparated, are equal in respect of immovables: for one has not power over the whole, to give, mortgage or sell it'), one person has not power to make a sale or other transfer of such property. For here also (in the very instance of land held in common), as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure.

'But the texts of Vyása (section 27) exhibiting a prohibition are intended to show a moral offence, since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

'So, likewise, other texts (as this, 'though immoveables or bipeds have been acquired by a man himself, a gift or sale of them *should* not *be made* by him unless convening all the sons,') must be interpreted in the same manner. For here, the words 'should' 'be made' must necessarily be understood.

'Therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null, for a fact cannot be altered by a hundred texts.

'Accordingly (since there is not in such case a nullity of gift or alienation), Nareda says—'when there are many persons sprung from one man who have duties apart, and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth' (Chapter II).

"These texts assert only that a man is the owner of his own property, and that a man who owns an undivided share in family property can alienate that share without the consent of his co-sharers. Therefore, this gentleman argues that testamentary perpetuities are sanctioned by the *Sástras*, because the *Sástras* affirm the power of alienation *inter vivos*.

"These are the only authorities on which the Pandit grounds the right of creating perpetuities by will. Now, if you are to get an authority in favour of the right of creating testamentary perpetuities out of a text which asserts the power of a co-sharer in family property to alienate his undivided share, you may make anything out of anything.

"Another gentleman, Bábu Jaykissen Mukerjee, who is a Member of the British Indian Association, gives the following account of the matter—

'Although the power of making testamentary bequests is not expressly recognized by our *Sástras*, the legal validity which they give to alienations, however sinful, by gift or sale *inter*

viros, of one's property, ancestral or self-acquired, to the prejudice of one's heirs, has naturally, in the absence of any prohibitory law, been construed into a tacit recognition of such a power; and we find that, from a very remote time, the Hindús of Bengal have exercised the power of making wills. Where a deviation from the rules of inheritance was intended, a dying man's wishes with regard to the disposal of his property after death were formerly, in most cases, orally given; and it was only in the rare cases of very wealthy persons that recourse was had to the more formal process of recording them on paper, in the form of *niyama-patras* or *dána-patras*, which were faithfully carried out after their death. With the increase of wealth and other changes in the circumstances of the country, the more formal mode of will-making has gradually found favour with the community; and a natural desire in the owner to preserve his immovable property in its integrity, safe from the effects of minute sub-division or from any acts of improvident waste, and to provide at least for the easy maintenance of his heirs and their descendants, has made will-making among the Hindús of Bengal more general than before. The absence, however, of any rules regarding the execution and attestation of wills, and the accordance of the same legal effect, equally, to oral and written wills, give rise to the perpetration of fraud and to ruinous litigation, which it is now time to obviate as much as could be done by legislative enactments. The present Bill, so far therefore as it declares all nuncupative wills null and void, must be hailed as a salutary measure of reform.'

"The fact is, as I stated at considerable length on the last occasion, that this is a matter in which the Hindú law is completely silent, and that it is silent because the whole subject belongs to an order of ideas altogether foreign to Hindú law.

"Assuming, then, that the Hindú law is silent on the subject, the question arises, what are the inferences from this silence? There are two sets of inferences; the first is a legal inference, and the second a legislative inference. With regard to the legal inference, it is a question for the Courts of Justice to determine. I said a good deal before as to the inference which, in point of fact, the High Court in Calcutta and the Privy Council had drawn from the state of the law on the subject. But let the legal question be decided how it will—whether the Privy Council should ultimately hold that the silence of the Hindú law authorized the creation of testamentary perpetuities, or that there is no foundation for them at all—I say, the fact that the Hindú law is silent leaves the whole question open for legislation and gives us a clear right to legislate. Much has been said of the obligation of the British Government not to interfere with the religious institutions of the Hindús. I fully admit that. It is the bounden duty of the Government not to interfere with the old and cherished and conscientious feelings and institutions of their Hindú subjects. I think we should have no moral right to break up the laws relating to the Hindú family or the custom of adoption; we should have no moral right to interfere with their religious establishments,

at all events in their present state of feeling, and I admit that we ought to consider that, in these matters, our legislative discretion is bounded by the general principles of Hindú law. But I never will admit that it is our duty to preserve unaltered every legal right of every kind which our Courts may happen to recognize as being vested in Hindús, especially when such rights arise from the silence of the Hindú law and the partial and incomplete application of the English law to India. This is a state of things for which it is our duty to legislate with a view to what we must regard as the best interests of those for whom we have to legislate.

" Before I leave this part of the subject, I may refer to one argument to which I referred before. It is the argument that the Hindú law not only does not sanction testamentary perpetuities, but has provided no means to give effect to them. This is a substantial difficulty. If we are by law to sanction so strange a power as that of creating perpetuities, we must provide the machinery, and the machinery which the English law has provided is the machinery of Uses and Trusts, and much else with which I need not trouble the Council; but if we find that this machinery is not provided by the Hindú law, that proves that perpetuities are by Hindú law impossible. It is too much to ask us to supply, out of the English law, the machinery required to effect what the English law regards as a bad object. You cannot take a portion of the English law on the subject. You must take the whole law or none at all; and anybody who knows anything of the English law on the subject and its extreme complexity, will admit that it is not desirable to introduce it into this country. This argument has been advanced by Sir Barnes Peacock, and is really conclusive against testamentary perpetuities being permitted by Hindú Law; and this is in point of fact admitted by the British Indian Association. That Association, some leading members of which are intimately connected with the case of *Tagore* v. *Tagore*, speak as persons considerably interested in the question, and consequently great weight attaches to what they admit as against themselves. I wish to call the attention of the Council to one or two paragraphs in their memorial. They say—

'The Chief Justice holds that the question of 'perpetuities' is altogether alien to and impossible to Hindú law—and this because 'there are no means provided by the Hindú law for creating a perpetuity.' Your memorialists respectfully submit, that there are the same (at any rate analogous) means admissible under the Hindú system (aided by English judicial procedure) to effect such a purpose, as were anciently to be found in the English law before the invention of 'Common Recoveries,' and before imposition of the forensic device of a rule to thwart perpetuities:—the liberty or license was *then*, your memorialists are well advised, possessed by English testators, to annex perpetual arbitrary conditions and limitations to the

enjoyment of and succession to property. Moreover, the difficulty in any view is at once ad-entirely dispelled by recognizing the application to Hindú dispositions, of those two qualifications and exceptional devices, each creatures and equitable inventions of English judicature, namely, the 'trust' in its integrity (at least unshorn of its chief characteristics), and the executory devise.'

"These gentlemen thus admit that the Hindú law knows nothing of perpetuity; that it provides no means for the protection of perpetuities if they can be created. But they say, 'you have the means—trusts and the like; lend us them, and our wills will stand as well as yours.' That is an ingenious way out of a difficulty. But I say, if you are to take the English law, take it in its integrity; if you take the English Law of Trusts, take it subject to the rule against perpetuity; if you take the Statute of Uses, take the decisions which governed its application; if you take the Statute De Donis, take the Law of Fines and Recoveries with it and the disentailing Act by which they were abolished. You will then introduce into India the most intricate, complicated and difficult law that ever existed on any subject; but at all events you will be consistent. But these gentlemen ask to be allowed to adopt just as much as will enable them to carry out their wishes and to reject the rest. That is like playing the game of Heads I win and tails you lose, which is an exceedingly pleasant game if you can get any one to join you.

"I have now done with the first inference drawn from the silence of the Hindú law, that the whole matter is open to legislation. The second question is, how are we to legislate? That throws us back on general principles of policy, and to the general spirit and temper of Hindú society as applied to this subject. When I last addressed the Council, I said that no system could be more opposed to the creation of perpetuities than the Hindú system; I meant, of course, to the creation of *testamentary* perpetuities; and I think any one who looks at the report of my speech will say that it is clear that I did mean that, or else that I contradicted myself twenty times over within the space of twenty sentences. It is stated that I did contradict myself during the whole of that speech, and that my arguments were therefore entitled to no attention. I shall not answer that remark except by saying that, in describing the Hindú law as opposed to perpetuities, I meant that it is opposed to the creation of perpetuities by will, and I say so still. There are two different views of the nature of property. You may regard property, either as the property of a family, or as the property of an individual. Each of these views is perfectly consistent. According to the first view, property is the property of the family in general; the head of the family is the managing member of the property, and the property is to descend, according to certain fixed rules of descent, from generation to generation, the family remaining undivided and

undisturbed. That theory obtained for many centuries, and does still obtain to a great extent throughout the whole of India. But that theory is not peculiar to India; it obtains in many other countries. It obtains at this day to some extent under the *Code Napoleon* in France. It obtains, however, throughout India, and, subject to one very great exception, it obtains in Lower Bengal. This exception is that, in Lower Bengal, under the *Dáyabhága*, the right of alienation exists. A man has the power, without the consent of his heirs or co-sharers, to alienate, either the whole inheritance, or his own particular share. Now, I affirm that the theory of family property, whether modified or not by the power of alienation, is altogether inconsistent with the creation of testamentary perpetuities. Apart from the power of alienation, this is self-evident. If the law is that the property is always to remain in the family and to go down from generation to generation according to the prescribed course, it is clearly inconsistent that the head of the family should have the power of altering that course of succession.

"I know that it is affirmed that this does not apply to Lower Bengal, because of the power of alienation which prevails under the *Dáyabhága*. That is a complete misconception. I know perfectly well that the head of the family, or a co-sharer, has the power to alienate the inheritance, or his share; and if he voluntarily gave away his property and received no consideration for it, he would no doubt have the power, in that indirect manner, to disinherit his family; and, so far as that power extends, the individual theory of property prevails, and the family theory is given up. There is, however, no necessary connection between the power of alienation and the power of disinheriting a family by will. Suppose the proprietor sells his property and simply changes its form by taking land instead of money, or money instead of land, the substituted property would descend, according to law, in the same way as the original property; and thus, except in the rare case of a free gift to a stranger during the life of the ancestor, the power of alienation does not involve the power of altering the course of succession. That is still the case in France. If a man, there, has ten sons, he can alienate only one-eleventh of his property, and the rest must descend to his sons in equal shares. But that places no restraint upon alienation. If, for instance, a man with ten sons sells land for 100,000 francs, his ten sons would get ten-elevenths of that sum; so that the only way by which the parent could effectually disinherit his family would be by making a gift for no consideration during life, or by destroying the property which he possessed during his life; the mere changing of the form of property would not change the right of the sons to inherit, and would not give the owner any greater testamentary power than he would have possessed if he had not

alienated. The principle, therefore, remains, whether the power of alienation does or does not exist. In Lower Bengal, the family theory of property does exist, subject to the power of alienation and to whatever changes may have been introduced by the gradual introduction of wills; and the family theory, on which the whole system is based, is, as I said before, radically inconsistent with the power of a testator to create a testamentary perpetuity.

"No doubt, however, the power of making wills, however introduced, has, to a certain extent, introduced into Lower Bengal what I have called the individual theory of property. Let us then consider how this theory affects the question of testamentary perpetuities. The individual theory of property obtains where each individual holds property for the time being absolutely. How is that theory related to the power of creating a testamentary perpetuity? Some of the Memorialists appear to think that it involves such a power. This is the view of the *Bharatabershya Sobha*.. They say—

'The principle on which the English law has proceeded, in refusing to permit the creation of perpetuities, is that, according to that law, no man is the absolute owner of property to do with it as he pleases. The exact opposite of this principle is the rule of Hindú law. See the text of *Nareda*, 2 Colebrooke's Digest, London Edition, p. 101, B. II, Ch. IV, Sloke 6.'

"Considering the importance which the Hindú law attaches to family-rights, the assertion of the *Sobha* seems a strong one. I will, however, accept it and see to what it leads. I have been told that I do not know much of Hindú law. I will try to learn; but I think I may claim to know something of English law, and it is certainly very new to me to hear that the English law asserts that no man is absolute owner of his own property. What is absolute ownership? It is an unrestricted power, secured to a man by law, of doing what he likes with a thing to the exclusion of all others. From this definition it follows that ownership can exist only during life, and must terminate at death, for the dead have no powers and human law cannot affect them. Now, absolute ownership in this sense is certainly well known to English law. I had always supposed that a man might do what he pleased with his own in England, as much as anywhere else. Take, for instance, this watch. It is, I have always supposed, and do still suppose, my absolute property. I may use it as I please; I may give it away; I may throw it into the river, or sell, or pledge or destroy it. But over and above the power to derive every advantage from it which a man can derive from a thing, I may also, on my death, say who is to succeed me in the enjoyment of those advantages, and I may, by the Succession Act, limit its possession to some one person for life, and after his death to his eldest son absolutely, on his attaining his majority,

That I call being the absolute owner of property. If some one were to tell me 'you are not the absolute owner, because you cannot direct that five hundred years hence some person must wear that watch in one pocket and not in another,' I should say that such a man was talking nonsense. Property exists while we live, and ceases the moment we die; and it is utterly impossible, by any device, to increase the enjoyment of property beyond life. No doubt you may give a man, at death, the power to regulate, after his death, the enjoyment of what used during life to be his property; but this is a different thing from property. It is not a proprietary right at all, but a power to limit the proprietary rights of other people. A man, I say, is absolute owner of a thing when, during the whole course of life, he can do with it what he pleases; on the other hand, he is not the absolute owner if his enjoyment of the thing is restricted. Suppose my watch is what is called in England an heirloom; that it is vested in Trustees, who are to hold it upon trust to permit me to use it during my life, and to permit some one else to use it after my death, and so on, from generation to generation. Should I, in that case, be the absolute owner of the watch or not? Certainly not. The individual theory goes to this extent, that each successive generation has, for the time being, the whole property, and is the absolute owner of the subject-matter of proprietary rights. In so far as this is not so, you interfere with the individual theory; you make the living man the servant of the dead, and you prevent each generation, as it comes into being, from owning the property which it uses. The theory of absolute ownership, in short, is utterly opposed to the theory of testamentary perpetuities. Testamentary perpetuities make absolute ownership impossible as far as they extend. Therefore, whether you take the family theory or the individual theory of property, you cannot justify the creation of testamentary perpetuities. In either view of the case the practice is indefensible, and would not be permitted in any country which legislated consistently upon either principle. The family theory is opposed to testamentary perpetuities, because the power to create them enables an individual to alter the course of descent which the law has fixed for property. Testamentary perpetuities are opposed to the individual theory of property, because they prevent any one man during his life from being the absolute owner of any one thing, and subject him to the will of a dead person. In neither of these theories can you find justification of this power of the creation of testamentary perpetuities. The attempt to create such perpetuities arose when the one theory was declining and the other theory was coming in; when the managing member of family property began to consider himself as the perpetual sovereign of the family, for which he was to legislate for all future time. That, I believe, you will find to be the source of this practice, which flatters very nearly every weakness of the human

mind. It flatters the love of power, for it enables a man to make laws after his death. It flatters posthumous avarice, for it enables a man under its influence to think of his property as existing from generation to generation after his death according to his will. It flatters posthumous vanity by making a man think that he is wiser than those who will come after him, and that he, in 1870, is better able to direct what course should be followed in the year 2070 than those who will then be living.

"I am referred by the British Indian Association to the Roman law, to the Dutch law, and to some other laws, as supplying precedents in favour of their views. I do not profess to know every thing about all laws; I know a little of the Roman law, a little more of the French law, and something of the English law. In the Roman and French law, the practice of testamentary perpetuities gradually introduced itself, and under those systems it was found necessary to restrain the practice by legislation. But with regard to the English law I speak with more confidence; and although the British Indian Association say that they are well advised on the subject, it appears to me that they are in point of fact very badly advised in some of the assertions which they make. The Memorial says that the device of Common Recoveries put an end to testamentary perpetuities:—

'Your memorialists respectfully submit, that there are the same (at any rate analogous) means admissible under the Hindú system (aided by English judicial procedure) to effect such a purpose, as were anciently to be found in the English law before the invention of 'Common Recoveries,' and before imposition of the forensic device of a rule to thwart perpetuities:—the liberty or license was *then*, your memorialists are well advised, possessed by English testators, to annex perpetual arbitrary conditions and limitations to the enjoyment of and succession to property.'

"The memorialists are thus advised that, before Common Recoveries were invented, testamentary perpetuities were permitted in England. Whoever advised them thus advised them wrong. At the time when Common Recoveries were invented, and long afterwards, land could not be devised at all in England, and personal property was never capable of being entailed. The question of perpetuities arose, not in connection with wills at all, but in connection with deeds. Common Recoveries were invented in the reign of Ed. IV, and down to the 32nd of Henry VIII, many years afterwards, no Englishman could make a will of land. The right to do so was created by the 32nd of Henry VIII: consequently, the Association is quite misinformed as to the English law upon the subject; but as they wish to know how the law stands, I will shortly refer to the facts, omitting exceptions and qualifications which would have to be introduced in a complete account of the subject. For some time after the Conquest, land

could neither be devised nor aliened. It was granted for the life of the tenant on the condition of military service. By degrees, the power of alienation was introduced. The Judges tried to extend, and the nobles, who were then in possession of the principal legislative power, tried to prevent, it. In order to effect this object, a practice was introduced of granting land to a man 'and the heirs of his body.' The Judges held this to be a conditional gift, which became absolute when the condition was fulfilled by the birth of an heir of the grantee's body. To meet this, an Act, called the Statute De Donis, was passed in the time of Edward I.

"It provided that gifts in the form in question should be strict entails, and that the land should descend to the heirs of the grantee's body without power of alienation. Blackstone gives an account of the way in which this Act worked.

'Thus much for the nature of estates-tail: the establishment of which family law (as it is properly styled by Pigott) occasioned infinite difficulties and disputes. Children grew disobedient when they knew they could not be set aside: farmers were ousted of their leases made by tenants in tail; for, if such leases had been valid, then under colour of long leases the issue might have been virtually disinherited; creditors were defrauded of their debts; for, if tenant in tail could have charged his estate with their payment, he might also have defeated his issue, by mortgaging it for as much as it was worth: innumerable latent entails were produced to deprive purchasers of the lands they had fairly bought; of suits in consequence of which our ancient books are full: and treasons were encouraged; as estates-tail were not liable to forfeiture, longer than for the tenant's life. So that they were justly branded, as the source of new contentions, and mischiefs unknown to the common law; and almost universally considered as the common grievance of the realm.

"This was the system which was overthrown by the invention of Common Recoveries in the reign of Edward IV. That was the state of things, as described by Blackstone, at the time when these gentlemen who memorialized the Council say that they are well advised that English testators then possessed the liberty 'to annex perpetual arbitrary conditions and limitations to the enjoyment of, and succession to, property.' English testators never had the power to annex anything of the kind; for, first, we find that, at the time to which the memorialists refer, wills of land could not be made at all, and then, when long afterwards the attempt to introduce testamentary perpetuities was made, nobody had the power to make such a will as they describe. But it does not stop there. The power to make wills was introduced by degrees. I need not trouble the Council with describing the growth of Uses and Trusts; but when trusts came to be recognized by law, new attempts to create perpetuities were made, and the Courts of Justice had to devise new modes of defeating these attempts, as they had defeated the attempt of Parlia-

ment itself to introduce perpetual entails. All the history of England shows the evil of testamentary perpetuities. Even if the legislature were to provide for it, means would be found to defeat it, because of the evils which would be intolerable.

"Having thus considered the historical precedents referred to, I come to the question of general convenience. I have carefully read through every thing I could find on this subject, and every paper forwarded to me by the Bengal Government. I find a great deal said about the Hindú law and the English, Dutch and Roman laws, and I find references to all sorts of texts and *Sástras*. But there is one thing I do not find. I do not find one single remark which even claims to show that testamentary perpetuities would be convenient or suitable or beneficial for the public. I find a few remarks as to the disintegration of families, and provision for families, as if those who live now knew better how to manage property than persons who will be living when it has to be managed, perhaps, a hundred years hence. Why should this be expected? That is a simple question to which it is difficult to give an answer.

"I find in one paper that exceptions are taken to the account I gave of perpetuity. In that paper it is said—

'The whole proposition is a gross, arbitrary, and scandalous assumption. No man who desires to create a perpetuity for a moment thinks that he will thereby '*perpetuate his own enjoyment*' after 'he is dead and gone,' particularly 'by interfering with other people's enjoyment of it' He may have different motives for what he may do; he may wish to make a permanent provision for his family, or to transmit his family name from generation to generation, or to found a religious trust for all time; but he must be considered a lunatic if he thinks that he will thereby 'perpetuate his own enjoyment' after 'he is dead and gone.' Mr. Stephen only creates an absurdity in order to abuse it. It reminds us of the old saying—'give a dog a bad name and then hang it.' Then Mr. Stephen confounds accumulation without enjoyment with the perpetuation of enjoyment. The first is certainly objectionable, because it is opposed to the natural rights of man and to the essential condition of property. What is property for, if it is not to be used and enjoyed? and we should consider the man who would tie it up against all use and enjoyment an enemy to society.'

"They refer to the case I referred to and say—

'And, happily for the credit of human nature, cases like those of Thellusson and Assima Kumár are rare. In fact we doubt whether there is a third case of its kind in the whole range of English and Indian decisions. We would dispose of a testator who would thus tie up his property as a lunatic and therefore disqualified to make a will. The other man, who is solicitous to see his family well provided for, to guard against the dissipation of the family fortune, and to secure the continuance of the family name and prestige, acts on the impulse of nature, and is justly entitled to the sympathy of all honest men.'

"That argument goes a very long way, and it appears to me to come to this. Wise perpetuities should be permitted and foolish ones prevented. Courts of Justice are to say to testators, 'you may create testamentary perpetuities, but if, in the exercise of that power, you do anything that we consider absurd, we will treat you as a lunatic. We will consider, with reference to each scheme, whether it involves accumulation without enjoyment or the perpetuation of enjoyment. We will always entertain the question whether you, the testator, are a mischievous lunatic or a rational man.' Surely this would be monstrous. Surely we ought once for all to lay down a rational rule on the subject. Of course the cases to which I referred are extreme cases, but it is by extreme cases that you test principles. You see the absurdity of letting a man tie up his property for ninety-nine years. Then, where do you stop? At sixty? At thirty? When you interfere at all, you give up the principle of absolute ownership as you understand it, and I defy you to find any other, except that of general convenience, to which I appeal. I say, let a man say how his property is to be enjoyed during the lives of those whom he knows and of those who come immediately after them, but do not let him make laws for unborn generations. You say, in virtue of the principle of absolute ownership of property, we will permit men to legislate as to the future disposition of their property for all future time, subject only to this, that if they legislate in a way which we think absurd, we will treat them as lunatics. Which of us deals with testators most liberally and rationally?

"It is said that such acts as those of Thellusson and Assima-Kumár are rare. It may be very true that they are rare now, but that is because they are illegal; if they were not illegal, they would be just as common as rich avarice, rich folly and rich vanity could make them. If men who know the probable illegality of such acts will take the risk of having their wills set aside for the chance of being able to do them, can it be doubted that, when their legality is established, you will have scores of such cases, or that they will create scandals, which will disgrace the country for generations to come? In connection with this matter, I wish to refer to a remarkable paragraph in the paper by Bábú Bhudeb Mukerjee, to which I have referred before. He makes a very remarkable observation as to the causes of the desire to create perpetuities by will and the sources from which it arises.

'Indeed, the desire to ensure their families against decadence is growing into strength among the influential classes of the Native community, as the old generation of men with fatalist ideas are giving way to others who bethink themselves of human means to avert or stave-off an impending evil. Not long ago, there was a movement among certain members of this class in favour of a law of primogeniture. However repugnant to the natural sense of justice

and to the time-honoured law and usage of the country that movement was, it hardly called forth one dissentient voice. The continued existence of certain great and rich families in a country is in itself a great good, and, under certain circumstances, it is absolutely necessary to the growth and preservation of a people. One may believe, therefore, that, where the law of equal division of property as well as other causes are continually operating to disintegrate large estates, the instinct of the people may seek for some means by which to secure the continued existence of such estates among them. The desire to create perpetuities, as I have seen it manifested, does not seem to me to have sprung up from anything like a wish for posthumous legislation, or for protracting enjoyment of property beyond death. On the contrary, the desire for perpetuities, here, has much more to do with a weak hopelessness and apprehension for the future. It springs up from the same source which, some time ago, induced the movement for a law of primogeniture in favour of certain classes of the community, a movement which can in no way bear the interpretation that has been put upon perpetuities. Both are meant to counteract the disintegrating influences which are in active operation. Believing thus, I feel persuaded that the passing into law of the present Bill with the sections against perpetuities will be anything but a popular measure. It will appear to have deprived the Bengáli testator of a power which his own law gave him, and it will greatly increase endowments to idols for the beneficial *use* of the testator's descendants. The evil of locking up capital by religious endowments will thus be hastened. Section 105 is not made applicable to Hindú wills, and section 103 cannot interfere to prevent the appointment of *Sevágits* to idols in perpetuity, as the property *vests* in the idols at once and without delay.'

"Now, to whom do these remarks apply? They must be a small class and a wealthy class. I cannot refrain from one or two observations, which I hope may reach their attention.

"They wish to perpetuate their family names and estates. I do not say a word against old families or great estates. I can recognize both, where the members are men of sense and wisdom, as the natural bulwarks of the country as much here as in England. But there are two ways of perpetuating families, a natural and an artificial way. Perpetuate families by all manner of means, and make them proud of your name; preserve your family greatness, prestige and power. But if you attempt to do so by endeavouring to set aside the natural course of events, you will miserably fail. You cannot do it by trying to relieve your descendants of the anxieties and responsibilities which are the common lot of us all, and the great motives to all honourable exertion. We have most of us known, in England, cases in which attempts have been made to set up parchment fortifications against extravagance and folly, and, by the arts of the Conveyancer, to relieve a man from the natural responsibilities of life; but all such attempts have failed, and we have all seen cases in which names which ought to have been noble have been dragged in the dirt, and fortunes which ought to have been princely scattered in the gutter, in despite of all that could be done by the most skilful Conveyancers in England to avert the calamity.

"And I would say to all who, in this country, are making such attempts, do not trust to anything so weak and miserable as the protection which testamentary perpetuities will afford your families. If you want to perpetuate your families, trust to education, to vigorous manly labour, to an honourable ambition; point out to your sons the careers which are open to them; show them the bench of the High Court, the ranks of the Civil Service; tell them that science and knowledge of every kind have before them as wide and important a field in this country as in any part of the world, and in that way perpetuate your family and your names from one generation to another. It is the only way of doing it.

"I wish to pass on to Babú Bhudeb Mookerjee's remarks on religious endowments which I have just quoted.

"He says, and some of the memorialists say with him, that it is inconsistent to permit perpetuities in connection with religious endowments and to prevent them for other purposes. That is a dangerous argument; for, although it may prove that the two stand on the same footing, it does not prove that either stands on a good one. They are in fact, however, essentially different. Testamentary perpetuities to individuals have nothing to do with the Hindú religion, but these gifts to idols have a great deal to do with it. The legislature ought not to interfere with the Hindú religion, and I, for one, never would make such a proposition and should consider it improper and dangerous. It does not, however, follow that we are bound to imitate, in secular affairs, what we are obliged to permit in regard to religion. Being an Englishman, and having to assist in legislating for the Hindús, I think myself debarred from legislating on that subject. That being the state of the case, I should wish to act straightforwardly towards an institution with which I have no sympathy, and for that reason I do not propose to apply section 105 of the Succession Act to Hindú endowments. That section is copied from an English Act of George II. It provides that bequests for charitable purposes must be made by a will executed twelve months before the death of the testator. If we were to extend that provision, I should feel that it was a side-blow against Hindú endowments, and I would scorn to do anything by a side-wind which I could not do directly.

"That particular clause was originally intended as a preventive against the undue influence said to be exercised by Roman Catholic Priests on dying men. But that is not the state of things in this country; at least the papers before us afford no evidence of its existence. Let the Hindú laity come and say 'protect us against our priesthood,' and we will legislate fast enough; but in the mean

time it is not only our policy, but our duty, to abstain from all interference with religious endowments. It is said that these endowments are used as a mode of providing individual perpetuities, and that a colourable gift to an idol is often made for that purpose. If that is so, it is a question for the Courts of Justice to determine whether such a gift is valid or not; it is not a question with which we can deal, sitting here. Whether such a will would be good or bad is a question on which I give no opinion, and must leave to the determination of the High Court should it arise. This Act will have no effect whatever on that question. It is said, also, that the question of testamentary perpetuities is still under appeal, and that we ought to wait for the determination of that appeal; but, it being admitted and proved that the Hindú law is silent on the subject, all that the Privy Council can say is that, there being no prohibition, they are permitted; and in this case, for the reasons specified above, we have, I think, a right to legislate.

"The Hon'ble Mr. Cockerell, I understand, agrees with me on the subject of perpetuities; but he has given notice of a motion for the omission of that clause for the present, in order that the Bill might be passed at once. To this proposal I have no very decided objection, and will place myself in the hands of the Council as to the course to be adopted."

The Motion was put and agreed to.

The Hon'ble Mr. Cockerell moved that the Bill be amended by substituting, in section 2, line 3, the figures "99" for the figures "103," and that the Bill so amended be passed.

As the effect of this proposed alteration of figures was the omission from the Bill of those provisions of the Indian Succession Act which imposed a restraint upon the creation of perpetuities by will, it was necessary for him to join the two motions, in order to explain the apparent inconsistency of now proposing to set aside one of the chief recommendations of the Select Committee of which he was a member, a recommendation which he not only supported in Committee, but had, on the two previous occasions on which this Bill had come before the Council, strongly advocated.

He (Mr. Cockerell) went entirely with his Hon'ble and learned friend (Mr. Stephen) in his condemnation of the sufferance of testamentary perpetuities, which it was now attempted to support by the alleged authority of the *Sástras* and the sanction of ancient usage.

We all knew what capital had, on many occasions of political agitation in England, been made out of the groundlessly raised cry of "No Popery;"

and if there—where, he ventured to say, the proportion of thoughtful men, men who could give a good and substantial reason for their belief in regard to any subject,was much greater than in this country—people were, to a great extent, led away by such an artifice, we should hardly be surprised to find that the cry raised by a comparatively interested few 'the *Sástras* are in danger' should have the effect of arraying against us in this matter such a consensus of opinion on the part of the Natives of Bengal, as was expressed in the communications received by the Council.

In dealing with a measure of this kind, we should not therefore be deterred, by a mere unreasoning opposition, even though the feeling which prompted it might seem to be general on the part of those for the regulation of whose affairs we proposed to legislate, from imposing, in the interests of the community, those restraints upon the capricious exercise of his dominion over property by the individual, which the experience of all civilized countries had shown to be needful.

Had the opponents of the proposal to prohibit, by legal enactment, the creation of perpetuities by will, been able to adduce any reasonable grounds for their opposition? They appealed to the authority of the *Sástras* and claimed for it the sanction of custom.

Even if time permitted he (Mr. Cockerell) should hardly feel justified in attempting to add anything to the most able and interesting exposition of the case and to the exhaustive arguments of the learned mover of the Bill, as regards this alleged authority of the *Sástras*. Mr. Stephen had shown most conclusively that the authority claimed was, even according to the shewing of the claimants themselves, of a purely negative character; that is to say, the utmost that could be truly alleged was that the *Sástras* did not contain any prohibition of perpetuities by will—the real fact being, as so ably argued by the learned member, that the ancient Hindú lawgivers, having no conception of such instruments as wills, were necessarily silent on the subject of testamentary capacity.

Then, as regards custom and usage, what were the facts of the case? It would perhaps be in the recollection of those members of this Council who took part in the debate on the Panjáb Tenancy Bill, that one of the strongest arguments against the allegation of a power of eviction of their tenants being vested in the landlords was that, to establish the existence of such a power, it must be proved to have been exercised, and that it was idle to assert that such power was derived from custom, unless the facts constituting such custom,

namely, instances of the power being commonly put in practice, could be adduced. He (MR. COCKERELL) would apply that argument to the present case, and contend that, in the absence of any proof of the power of creating testamentary perpetuities having been commonly exercised, the sanction of usage could not be reasonably claimed in support of such power. And he said that those who claimed the sanction of usage in this matter had failed to cite any illustrations of its existence.

It was very remarkable, he thought, that the only instances known to them of the attempt to create perpetuities by will had become the subject of litigation, thus showing, it was fair to assume, that, so far from the practice being recognized as sanctioned by usage, its effect had always been to call forth opposition on the part of persons interested in the equitable devolution of the property concerned.

Entertaining these views, he should not have hesitated to support the mover of the Bill, had he proposed to pass it with the clauses relating to perpetuities, and he should have greatly preferred that course to the one which he was now impelled to take in this matter.

But his Hon'ble and learned friend, for the reasons which he had just stated, was not prepared to proceed with the measure, and he (MR. COCKERELL) was apprehensive that, in that case, the proposed legislation, notwithstanding the great importance of its early adoption, might be indefinitely deferred.

Under this apprehension he had moved this amendment, and it would perhaps be useful for the correct appreciation of the proposal now before the Council if he briefly recalled to the recollection of his Hon'ble Colleagues the antecedent circumstances of the Bill.

In its original shape, the Bill omitted all reference to perpetuities, and their prohibition, as was clearly shown by the published papers relating to the measure, formed no part of the legislative scheme of Mr. Stephen's predecessor, under whose superintendence the Bill was framed.

The proposal to legislate for the regulation of the wills of Hindú testators was founded exclusively on the expediency of restraining the fraudulent practices and excessive litigation which were believed to result from the absence of such regulation. The application of clauses prohibiting the creation of perpetuities by will was an increment to the original Bill, which it acquired in its passage through Committee. Important and eminently desirable and expedient as he (MR. COCKERELL) admitted that addition to be, he considered that

the importance of the original object of the Bill was undoubtedly greater; and sooner than consign its accomplishment to the uncertainties of the future, he would for a time forego the legislative prohibition of perpetuities, and pass the Bill in its original shape, with the proposed extension of the local limits of its operation. For the people of Bengal not only did not oppose the application to themselves of the main provisions of the Bill, but they were unanimously agreed that, if there was no restriction imposed on testamentary perpetuities, the proposed extension of the operation of the rest of the measure was on every account desirable.

There was, moreover, another aspect of this question which ought especially to commend itself to the favourable consideration of this Council at the present juncture. The immediate passing of this Bill would have the effect of opening up a new and additional source of revenue, which was so much needed in the financial year on which we had just entered. By the recently enacted Court Fees Act, a duty of two per centum on the amount involved was imposed on probates of wills. When the imposition of an *ad valorem* duty on such instruments was first proposed, it was objected that the tax would be most partial in its incidence, falling almost exclusively on Europeans, whose wills alone were at that time affected by the Indian Succession Act. The answer to that objection was that, on this Bill becoming law—and that event was then expected to occur very shortly—the tax would cease to be of a partial character, and then the rapid extension of the area of the incidence of that taxation might be confidently anticipated. He thought he might say that it was in view of these circumstances that the amount of that duty was ultimately fixed at two per centum.

It must be remembered, also, that a probate-duty was in fact a limited succession-duty.

After all that had been said to-day and on former occasions, as to the merits of making a succession-duty a part of our fiscal system, he thought that, considering the obvious advantage of gaining such experience of its probable effects as might in some degree be obtained from a tentative measure, such as the one now proposed, the adoption of the amendment would, when regarded from this point of view, be held to have much in its favour.

And even in regard to the question of perpetuities, the amendment held out some compensatory advantage. The correct principle of taxation was universally allowed to consist in such an adjustment of it as to make it reach the luxuries of the rich. He said, then, if the vicious luxury of creating testamentary perpe-

tuities was to be suffered to exist, or rather if it was not to be prohibited by law, at least for a time, then let it at least be subjected to reasonable taxation. If we were deterred for the present from barring the indefinite postponement of the absolute enjoyment of the property of a Hindú testator, we might at least, with advantage to the exchequer, provide that there should be no delay in the *vesting* of that portion of it which, when this Bill became law, could be justly claimed by the tax-gatherer.

The Hon'ble MR. STRACHEY said that he held a very decided opinion as to the course that ought to be followed on this occasion, and he hoped that the amendment before the Council would be rejected. He thought that, after all that had transpired, if we took the course of now striking out the clause relating to perpetuities, we should take a course little to the credit of the legislature. Mr. Stephen had shown, in the most forcible manner, that the objections to this part of the Bill were absolutely worthless, and that there was no foundation whatever for saying that testamentary prepetuities were in any way recognized by the Hindú law. At the same time MR. STRACHEY agreed with Mr. Stephen that there was no necessity at the present moment for passing the Bill. He thought it quite proper that the measure should stand over for further discussion, but he would much sooner see the Bill abandoned altogether, than consent to pass it with the omission of this particular provision. It might be said that it would be open to the legislature hereafter to amend the law. As a matter of theory, that might be true; but as a matter of fact, it would be impossible to say how long the law would be left in its present unsatisfactory state.

With regard to the financial considerations to which Mr. Cockerell had referred, they seemed to MR. STRACHEY to be of no importance. In the first place, the sum of money at stake must be, he supposed, from the nature of the case, quite insignificant; but if he was wrong, and the sum wais mportant, still he could not consider that it would be right, on such considerations, to abandon what seemed to him a principle of the highest importance. He therefore thought the further consideration of this Bill should stand over.

The Hon'ble SIR RICHARD TEMPLE said that he was not very well acquainted with the subject under discussion, but he would ask, what was the objection to pass the Bill without one particular clause? He was in favour of passing the Bill with Mr. Cockerell's amendment.

Major General the Hon'ble SIR HENRY DURAND said that he had assented to the introduction, into this Bill, of the clause to which the Hon'ble Mr. Stephen

had referred, providing that nothing in the Bill should interfere with the law of adoption and intestate succession amongst the Hindús, and he did so merely to remove all possible objection to the passing of the Bill. That being done, he saw no reason why the Bill should not be passed at once as amended by the Select Committee.

As far as testamentary perpetuities were concerned, his own experience was entirely in favour of the view taken by Mr. Stephen. SIR HENRY DURAND had read most carefully all the papers before the Council, and had marked many of the passages which had been quoted. The conclusion he arrived at was, that it was quite a new kind of juridical criticism to say that, because a system of law omitted entirely to treat of a particular prohibition, the absence of any mention or notice of it was to sanction the very thing prohibited. If we accepted the proposition, that any law, by omitting to notice a particular subject, authorised the doing of that particular thing, it appeared to him to be contrary to all sense: He would vote against Mr. Cockerell's amendment. He thought the Council should proceed to the passing of the Bill.

The Hon'ble MR. COCKERELL then asked leave to withdraw his motion.

Leave was granted.

The Council then adjourned *sine die.*

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 5th April 1870.

Office Supdt. Govt Printing.—No 407 L. C.—27 4-70—225.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Tuesday, the 7th June 1870.

The Council adjourned to Tuesday, the 14th June 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 7th June 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Tuesday, the 14th June 1870.

The Council adjourned to Tuesday, the 21st June 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 14th June 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Tuesday, the 21st June 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.

The Hon'ble JOHN STRACHEY.

The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.

The Hon'ble J. FITZJAMES STEPHEN, Q.C.

The Hon'ble B. H. ELLIS.

Major-General the Hon'ble H. W. NORMAN, C.B.

The Hon'ble F. R. COCKLRELL.

MADRAS DISTRICT MUNSIFS' BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to consolidate and amend the laws relating to District Munsifs in the Madras Presidency. He said that the primary object of the proposal to legislate in this matter was the extension of the pecuniary jurisdiction of the District Munsifs from one thousand rupees, to which amount it was limited under the existing law, to two thousand five hundred rupees. The pecuniary limit of the jurisdiction exercised by the corresponding class of Civil Courts was, in the Bengal Presidency, one thousand, and in Bombay, five thousand rupees.

The proposed increase was not proportionately greater than that recently accorded to the Bengal Munsifs by Act XVI of 1868.

It was advocated by the High Court and approved generally by the Judges of the principal Civil Courts in the Madras Presidency.

Moreover, looking to the fact that the pecuniary jurisdiction of the District Munsifs of Madras had undergone no change since 1833, and that, during the

period that had since elapsed, there, as elsewhere, the character of this class of Courts had vastly improved, the propriety of the extension now contemplated could not be doubted.

It was also proposed to consolidate the law relating to District Munsifs, now spread over several local enactments, and this part of the scheme had necessitated the reference to this Council of what was in itself, as the title of the Bill imported, a purely local measure; for the process of consolidation involved the re-casting of some of the provisions of existing enactments affecting the jurisdiction of the High Court, and thus placed the proposed legislation beyond the competency of the local legislature.

The Bill which had been prepared by the Madras Government, dealt solely with the law relating to District Munsifs. As it was necessary to refer the proposed legislation to this Council, he (MR. COCKERELL) thought that the scope of the Bill might have been advantageously enlarged by extending the work of consolidation to the entire law relating to the constitution and jurisdiction of all the Civil Courts of the Madras Presidency, subordinate to the High Court.

A consolidated enactment of this kind, in reference to the Civil Courts of the Bombay Presidency, was passed by this Council last year. The expediency of applying a similar measure to the Madras Presidency, now that the opportunity for it had arisen, appeared to be so obvious as to need no argument. If the Bill was eventually referred to a Committee, he (MR. COCKERELL) would certainly advocate its extension in the direction which he had just suggested.

The Motion was put and agreed to.

CUSTOMS DUTIES EXEMPTION BILL.

The Hon'ble SIR R. TEMPLE moved for leave to introduce a Bill to enable the Government of India to exempt goods from customs duties. He said that large quantities of piece goods and other merchandize were imported into British India and soon after exported to foreign territory.

In order to encourage the use of our ports as *entrepôts*, and for other reasons, it was convenient that the Government of India should have the power to exempt wholly or in part from export duty goods which had paid import duty.

But to authorize such exemptions in the face of the Indian Customs Duties' Act, and of the declaration in section one hundred and thirty-seven of the Consolidated Customs' Act (VI of 1863), he (SIR R. TEMPLE) was advised that legislation was necessary.

The Motion was put and agreed to.

BANK OF BENGAL DIRECTORS' BILL.

The Hon'ble SIR R. TEMPLE also moved for leave to introduce a Bill to enable the Directors of the Bank of Bengal to act by a quorum. He said that the Act for regulating the Bank of Bengal, No. IV of 1862, declared that the business of the Bank should be managed by nine Directors, but did not expressly authorize such business to be managed by a less number. A doubt had accordingly been raised as to whether the nine Directors could legally act by a quorum. The object of this Bill was to remove that doubt, and to validate acts which might be deemed invalid by reason of their having been done by less than the whole number of Directors.

The Motion was put and agreed to.

COURT FEES ACT AMENDMENT BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to correct two clerical errors in the Court Fees Act.

He said that the first and most important of these errors occurred in section fifteen, the words "plaint or memorandum of appeal" having been inserted in the seventh line in place of "application."

That the latter word was intended to be used was clear from the context, for the word "other" in the following line of the same section was only intelligible on the hypothesis that the clause had primary reference to some special "application." So obvious was this, that the clause might perhaps have been safely left as it stood to the construction which the Courts would put upon it, but for the circumstance that a literal acceptation of the words erroneously inserted would entail a not inconsiderable loss of revenue.

The provision of this fifteenth section found no place in previous enactments relating to Court Fees.

To discourage what was alleged to be a growing practice amongst the legal practitioners in the Civil Courts, viz., the presentation of applications for a review of judgment on frivolous or insufficient grounds, a special *ad valorem* fee was imposed on all applications for a review of judgment in lieu of the fixed fee chargeable on general applications to the Civil Courts, and which formerly obtained in the case of applications for review.

The provision of section fifteen was devised to prevent the enhanced fee working harshly in the case of well-grounded applications for review. It was intended thereby to recoup to the successful applicant the amount paid by him in respect of his application for review of judgment in excess of the fee chargeable on an ordinary application. The effect of the section as it stood, however, was to give back to such applicant, not the excess fee paid on the application, but nearly the fee paid on the institution of the plaint or appeal in relation to which his application for a review of judgment was successful, or about double the amount to which he was entitled.

The other error was to be found in Schedule I, No. 2, where the words "or memorandum of appeal" had been accidentally inserted. There was no appeal in suits for possession under the Limitation Act (XIV of 1859), such appeal being barred by Act XXIII of 1861, section 26. The words referred to, therefore, were mere surplusage, but they suggested an apparent inconsistency with other enactments, and it was therefore desirable that this opportunity should be taken to excise them.

The Hon'ble MR. STEPHEN regretted that it should be necessary to put so trifling an Act on the Statute-Book. He thought the Executive Government should be empowered to correct such clerical errors by Notification in the *Gazette of India.*

The Motion was put and agreed to.

OUDH TALUQDARS' RELIEF BILL.

The Hon'ble MR. STRACHEY introduced a Bill to relieve from incumbrances the estates of taluqdárs in Oudh, and moved that it be referred to a Select Committee with instructions to report in a month. He said that this Bill was introduced in fulfilment of the intention of the late Viceroy, and had been framed on the recommendation of the Chief Commissioner of Oudh, and at the request of the taluqdárs themselves. Many of those

taluqdárs were deeply in debt, and their estates were subjected to incumbrances so heavy, that they could not perform their proper functions as landholders. The Government considered that, for political reasons, it was expedient to take measures to protect those estates and to prevent their falling into the hands of money-lenders. The Bill resembled an Act which was passed in 1862 by the Bombay legislature, and which had been worked with much success. The Bill proposed to empower the Chief Commissioner, on the application of any distressed taluqdár, and with the previous consent of the Government of India, to vest the management of the taluqdár's estate in a Government officer. Suits against the taluqdár would thereupon be barred, his person would be freed from arrest, and his immoveable property from attachment, and, during the continuance of the management, his right to encumber or alienate would cease. The manager would receive the rents and profits and pay thereout the Government revenue, such annual sum as might be necessary to maintain the taluqdár and his family, and the costs of necessary repairs and improvements. The residue would be applied in defraying the costs of management and in settling the taluqdár's debts and liabilities. Provision was then made for ascertaining those debts and liabilities, and, on their discharge, the taluqdár would be restored to the possession of his estate. The rest of the Bill contained the clauses necessary to give effect to the foregoing provisions.

The Bill referred only to the taluqdárs of Oudh, but MR. STRACHEY thought that it deserved consideration whether it might not be expedient to insert a clause authorizing the Government, under special circumstances, to make the Act applicable to the encumbered estates of great landholders in other parts of the country.

His Excellency THE PRESIDENT asked whether it was sufficiently clear that, on the appointment of the manager, the management of the whole of the taluqdár's land would vest in him?

The Hon'ble MR. STEPHEN said that the second clause of section three provided that the Chief Commissioner might by order vest in the manager "the management of the immoveable property of or to which the taluqdár is then possessed or entitled in his own right," and he (MR. STEPHEN) thought that this clearly meant the whole of the taluqdár's immoveable property; but if there was any doubt the matter might be cleared up by the insertion of a word or two in Committee.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to relieve from encumbrances the estates of taluqdárs in Oudh :—The Hon'ble Messrs. Stephen, Ellis, and Cockerell, and the Mover.

The Council then adjourned to the 28th June 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA;
The 21*st June* 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Tuesday, the 28th June 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.

The Hon'ble JOHN STRACHEY.

The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.

The Hon'ble J. FITZJAMES STEPHEN, Q.C.

The Hon'ble B. H. ELLIS.

Major-General the Hon'ble H. W. NORMAN, C.B.

The Hon'ble F. R. COCKERELL.

MADRAS DISTRICT MUNSIFS' BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate and amend the laws relating to District Munsifs in the Madras Presidency and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Bill comprised the re-enactment, in a somewhat abridged and simpler form, of the principal portions of the existing law relating to District Munsifs in the Madras Presidency, together with some additional provisions taken from the Bombay Civil Courts' Act and the Bengal Subordinate Judges' Act. Contrasted with those enactments, the Bill presented the most notable points of distinction in its fourth and sixth sections. The powers, which by those sections were conferred on the High Court, were by the Acts just referred to reserved to the Local Government. The Bill in this matter adopted and proposed to legalize the existing practice. These powers were formerly vested in the provincial Courts of Appeal. On their abolition the direct control of the Zila Courts, as well as the other principal executive functions of the former courts, devolved on the superior court which was now represented by

the High Court. But so far as MR. COCKERELL had been able to ascertain the facts of the case, this result was not brought about, nor was it ever sanctioned by any express provision of the law: hence the subject-matter of the sections just mentioned seemed to present an open question demanding the particular attention of the Committee to which this Bill might be referred. Some of his Hon'ble Colleagues would remember that the question as to the authority on which the power of appointing Munsifs should be conferred underwent considerable discussion at the time of the settlement of the clauses of the Bengal Act; and that, although the power of making such appointments was nominally reserved to the Local Government, it was limited by conditions which in effect gave the High Court a complete control over the individual preferments for the office of Munsif. In the subsequently-passed Bombay Act the power of appointment of the corresponding class of judicial officers was unreservedly given to the Local Government. In both Acts there was this apparent inconsistency that, whilst the power of appointment of those officers was vested in the Local Government, their dismissal from office might be effected by the High Court without any reference to that Government. From these circumstances, MR. COCKERELL would venture to think that the principle of the vesting of these appointments had not yet been settled on any clearly-defined and satisfactory grounds, and that the whole subject demanded re-consideration. The only other provisions of the Bill to which it was necessary to make any special reference at present were contained in section seven. He had explained on a previous occasion the circumstances under which the extension of the pecuniary limits of the jurisdiction of the District Munsifs was proposed. That extension was in regard to suits relating to revenue-paying land scarcely more than nominal, for the effect of the further provision of this section, which substituted the mode of valuing suits of this class prescribed by the Court Fees' Act for that obtaining under the existing law, would probably be to enhance to about three times its present rate the valuation of such suits for the purpose of determining in what court they should be instituted. In other respects, moreover, he thought this provision was important. It supplied a rather marked omission in previous legislation. With the solitary exception of the existing law just referred to, which related exclusively to the courts of the District Munsifs in the Madras Presidency, and was there even only applicable to suits for land, he knew of no law which prescribed any rule as to the valuation of suits for the purpose of determining in what grade of court they should be instituted. The mode of valuation fixed by the former Stamp Laws, or the present Court Fees' Act, was intended for revenue-purposes only and was obligatory for no other purpose. It was possible that in the absence of any express legal provision on this subject, the rule of the

Stamp Act or Court Fees' Act had been generally followed, but it was more probable that enquiry would lead to the discovery that there was great diversity of practice in this matter. In this view of the subject, he considered the provision of the Bill as being of special importance. Of course, if ultimately adopted, it would only be applicable to the courts of the Madras Presidency. But though not binding on other courts, it would indicate the principle according to which the question of their jurisdiction in the case of suits, the subject-matter of which was other than a money claim, should be determined. The provision of the Bill, as it stood however, was not adapted to all cases, and would need some modification. There were several classes of suits for which the Court Fees' Act prescribed no mode of valuation, and for such some other rule should be provided.

In the suggestion which he had made when this Bill was last before the Council, as to the propriety of including in the proposed legislation the other civil courts of the Madras Presidency subordinate to the High Court, he referred to the present Zila Courts and Principal Sadr Amíns' Courts. He need only add that if this Bill was referred to a Select Committee, he proposed to prepare and lay before the Committee a revised Bill which would consolidate the existing law relating to these Courts, and deal with the points of difference as to jurisdiction and powers which they presented when contrasted with the corresponding classes of courts in the Presidencies of Bengal and Bombay. If the revised Bill was approved and adopted by the Committee, it could then be submitted for the consideration of the Local Government and High Court of Madras.

The Motion was put and agreed to.

CUSTOMS DUTIES EXEMPTION BILL.

The Hon'ble SIR R. TEMPLE introduced the Bill to enable the Government of India to exempt goods from customs duties. He had last week fully described the objects of this Bill. It need not be referred to a Select Committee, and he proposed at the next meeting to ask the Council to pass it.

BANK OF BENGAL DIRECTORS' BILL.

The Hon'ble SIR R. TEMPLE also introduced the Bill to enable the Directors of the Bank of Bengal to act by a quorum. He said that this Bill also was of so simple a character that he would not ask the Council to refer it to a Select Committee.

COURT FEES' ACT AMENDMENT BILL.

The Hon'ble MR. COCKERELL introduced the Bill to correct two clerical errors in the Court Fees' Act.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to consolidate and amend the law relating to the procedure of Courts of Criminal Judicature not established by Royal Charter. He said that from its title, the motion might appear somewhat formidable, but in point of fact the Bill was a measure of the smallest kind. It aimed at effecting a reform which might be termed typographical. The Code of Criminal Procedure had been extensively amended last year by Act VIII of 1869, which declared that the Code should be read as if certain new sections were inserted next after certain sections of the Code, and that certain other sections should be substituted for the corresponding sections of the Code which were repealed. The rules of Criminal Procedure were thus contained in two Acts instead of one, and the primary object of the present Bill, which was part of the scheme for the general consolidation of the Indian Statute Law, was to substitute one for two enactments. At the same time the opportunity would be taken to effect a few minor alterations, some of which, though not affecting the general principles of the Code, were of real practical importance. Chapter XIX, for instance, enabled the Magistrate to require security for the good behaviour of persons who would, in England, be termed rogues and vagabonds, and section 301 declared that in the event of any such person failing to furnish the security so required, he should be committed to prison until he furnished the same. The Code contained no provision as to the nature of this imprisonment and great discrepancy of practice accordingly prevailed. In Madras the High Court had left it to the Officer in charge of the Jail to exercise his discretion. But in the Lower Provinces of Bengal, in the North-Western Provinces and in Oudh, it had been ruled that the expression "shall be committed to the Jail" implied simple confinement. The result was that, throughout a great part of the country, many hundreds of persons were practically using the Jails as hotels, and leading lives of utter idleness at a serious cost to the Government. The change which MR. STEPHEN proposed to make would enable the Magistrate, whenever he thought fit, to inflict a sentence of rigorous imprisonment. There were some other small amendments which he would mention when the Bill was introduced.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to District Munsifs in the Madras Presidency :—The Hon'ble Messrs. Stephen and Ellis, and the Mover.

The Council then adjourned to the 5th July 1870.

SIMLA,
The 28th June 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Tuesday, the 5th July 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding*.

His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.

The Hon'ble JOHN STRACHEY.

The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.

The Hon'ble J. FITZJAMES STEPHEN, Q.C.

The Hon'ble B. H. ELLIS.

Major-General the Hon'ble H. W. NORMAN, C.B.

The Hon'ble F. R. COCKERELL.

CUSTOMS DUTIES EXEMPTION BILL.

The Hon'ble SIR R. TEMPLE moved that the Bill to enable the Government of India to exempt goods from Customs Duties be passed.

The Motion was put and agreed to.

BANK OF BENGAL DIRECTORS' BILL.

The Hon'ble SIR R. TEMPLE also moved that the Bill to enable the Directors of the Bank of Bengal to act by a quorum be passed.

The Motion was put and agreed to.

COURT FEES' ACT AMENDMENT BILL.

The Hon'ble MR. COCKERELL moved that the Bill to correct two clerical errors in the Court Fees' Act be passed.

The Motion was put and agreed to.

COINAGE AND MINT BILL.

The Hon'ble Mr. Stephen moved for leave to introduce a Bill to consolidate and amend the laws relating to Coinage and the Mint. He said that this Bill formed part of the scheme for consolidating the statutory law of British India. It would replace three ill-drawn Regulations and two Acts, and would, in addition to the provisions therein contained, authorize the destruction of light-weight, called-in, and counterfeit coin. If leave were given to introduce the Bill, it would be carefully settled in consultation with the Financial Department.

Leave was granted.

The Council then adjourned to the 19th July 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

Simla,
The 5th July 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Tuesday, the 19th July 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF, G.C.B., G.C.S.I.

The Hon'ble JOHN STRACHEY.

The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.

The Hon'ble J. FITZJAMES STEPHEN, Q.C.

The Hon'ble B. H. ELLIS.

Major-General the Hon'ble H. W. NORMAN, C.B.

The Hon'ble F. R. COCKERELL.

COINAGE AND MINT BILL.

The Hon'ble MR. STEPHEN introduced the Bill to consolidate and amend the law relating to Coinage and the Mint, and moved that it be referred to a Select Committee with instructions to report in a month. He said that one object of the Bill was to consolidate the five Regulations and Acts relating to coinage and the mint. No alteration had been made in the substance of the existing law, with the exception of the introduction of a section by which power was given to public servants to deface light-weight, counterfeit and called-in coin. His hon'ble friend, Sir R. Temple, would, Mr. STEPHEN hoped, consent to serve on the Select Committee, and would thus have an opportunity, if he thought fit, of suggesting any alterations which might be desirable from a financial point of view.

The Motion was put and agreed to.

LOCAL ACTS CONFIRMATION BILL.

The Hon'ble MR. STEPHEN also moved for leave to introduce a Bill to confirm certain laws affecting European British subjects. He said that in introducing the Bill he would trespass on the time of the Council for a few moments, as the subject was one of very general importance and interest.

The Council would be aware that the High Court at Bombay had lately held that the local Legislature of Bombay had no power to pass Acts by which European British subjects were subjected to criminal punishment. A European British subject had committed some trifling offence against a local law for which he was fined one rupee. The High Court held that the local Legislature was not competent to pass an Act inflicting such a penalty; that the conviction must be quashed and the fine repaid. The steps by which they arrived at this conclusion were these: The Indian Councils' Act which created the local Legislatures, restrained them from affecting the jurisdiction of the High Court. The High Courts had exclusive jurisdiction in criminal matters over Europeans. Therefore, every Act of the local Legislatures which inflicted criminal punishments on Europeans affected the jurisdictions of the High Courts, and was illegal. Upon each of these points the High Court entered upon an elaborate examination of all relevant authorities and principles, and they arrived at length at the conclusion above stated. MR. STEPHEN thought that they had a perfect right to do so, and he and the Government generally wished to treat their decision with the utmost respect. He, however, could not help saying that the subject was one on which other Courts might arrive at a different conclusion. He had seen careful and elaborate opinions by two of the most eminent lawyers in India, the effect of which was that the Local Governments had the right to pass Acts of the class in question, inasmuch as they did not affect the jurisdiction of the High Courts, but merely conferred concurrent jurisdiction upon the local Courts, and that there was no ground for the opinion that the jurisdiction of the High Courts was exclusive.

MR. STEPHEN'S own opinion was that the point of law was one on which difference of opinion might naturally prevail, inasmuch as it had in all probability escaped the attention of Parliament when the Indian Councils' Act was before them. The matter might probably come before the High Courts at Calcutta and Madras, and if they should take a different view from the High Court of Bombay, the result would be unseemly and highly inconvenient. If, on the other hand, the other High Courts were to concur with the High Court of Bombay, the result would be calamitous, as (amongst others) the Police Acts,

the Municipal Acts, and the Gaol Acts, would become a dead letter as regards Europeans. He (MR. STEPHEN) could not regard such a consequence without dismay. Considering that Calcutta and Bombay had each a large sea-faring European population, amongst whom order was preserved principally by the operation of the Police Acts, the consequence of repealing those Acts would be nothing less than disastrous.

Under these circumstances MR. STEPHEN thought it was the clear duty of the Government to interfere. They could not increase the powers conferred by Parliament on the local Legislatures. They could, however, confirm their Acts retrospectively, and give them the same validity as they would have had if they had been passed by the Governor General in Council.

As the Government had no intention of interfering with the privileges of European British subjects, care would be taken to draw the Bill in such a manner as not to subject them to any judicial officer who would not otherwise have jurisdiction over them. Its effect would be to make them punishable for the same offences for which Natives would be punishable under local Acts, but only by the Justices of the Peace who would have jurisdiction over them in respect of offences against the general criminal law.

The Bill would of course contain a clause indemnifying Magistrates who had acted under the Acts intended to be confirmed.

The Motion was put and agreed to.

BENGAL REGULATIONS REPEAL BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to repeal certain obsolete Regulations of the Bengal Code. He said that the proposed measure was another step towards the execution of the scheme recently laid before the Council by his hon'ble and learned friend MR. STEPHEN for the consolidation of the existing law. There was certainly no part of the Indian Statutes to which the consolidating process could be more advantageously applied than the Regulations of the Bengal Code. Though not embracing any great variety of subjects—for, excluding revenue matters and punishments for heinous offences, the Regulations could not be said to contain much substantive law,—yet their numerical strength and bulk were excessive. It had been frequently asserted that there was at the present time a tendency to over-legislation. If this could be said with any reason in regard to our modern legislation, what must be said of the legislation of the

Regulation era? That period extended—at least as regards extant Regulations—from 1793 to 1833. In 1834 there were on the Statute-book 561 Regulations, excluding those which had been rescinded previous to that time, and also the Regulations of the Madras and Bombay Codes. If we contrasted those figures with the nett result of the legislation which had taken place from that year up to the present time, a period almost corresponding in length with that in which the Regulations were enacted, we should find that, notwithstanding the vast extent of territory which had been added to the British dominions in India since the period just referred to, and the obviously increased requirements of a more advanced state of civilization, the total number of the unrepealed Acts of the Governor General in Council enacted from 1834 up to the present time, was considerably less than the number of Regulations which were in force in 1834.

It was true that in this comparison he (MR. COCKERELL) had not taken into account the enactments of the different local Legislatures, but, on the other hand, he had excluded the Regulations of the Madras and Bombay Codes. He had simply contrasted the nett result of the legislation of the Governor General in Council for all India during the last thirty-six years, with that of the legislation during the previous forty years for the Bengal Presidency only.

Since 1834 considerable progress had been made in reducing the number of the Bengal Regulations. For a large portion of them, the three great Codes,—the Civil Procedure Code, the Indian Penal Code, and the Criminal Procedure Code,—had been substituted. A still larger number had been extinguished as obsolete, or practically useless, by the repealing Act (No. VIII of 1868), and many others had been absorbed in such consolidating enactments as the Rent Law, the Consolidated Customs' Act, the Abkárí Act, the Registration Act, the Stamp Acts, &c. With all these reductions, however, the aggregate of unrepealed Bengal Regulations was still no less than 224—a number equal to, in fact exactly corresponding with, the number of the extant *general* Acts of the Governor General in Council. Of this number, about 62 might eventually be extinguished or absorbed on the passage through this Council of three Bills now before it, namely, the Bill for declaring the local extent of the general Regulations and Acts, the Jails' Bill, and the Coinage Bill. There would still remain 162 Regulations; and the object of the Bill, which he now asked leave to introduce, was to remove by express repeal so much of these enactments as had become obsolete or was unfit for retention as no longer necessary to meet the requirements of the present time, and thus to clear the way for condensing and reducing into the smallest practicable compass as much of the residue of these Regulations as was capable of being re-abridged by consolidation.

This project did not commend itself to approval solely on the ground of the advantage to be derived from the reduction of the *number* of the existing operative Regulations. Much as there was to admire in many of these Regulations as regards their comprehensive and perspicuous style and the benevolent intentions expressed on the preambles, which generally contained a sort of Statement of Objects and Reasons by which their framers were actuated, it must, he (MR. COCKERELL) thought, be admitted that the terseness of expression and scientific arrangement of matter which marked modern drafting were more suited to the practical age in which we lived than the diffuse language and unconnected sequences in which the substance of the Regulations was expressed and arranged. The Bill would provide for the absolute repeal of 43 Regulations, besides the partial repeal of 95 others. The number of Regulations or parts of Regulations thus left might be about 119, which would be classed as follows:—

Relating to	Land Revenue	57
Ditto	Civil Judicature	12
Ditto	Constitution and Jurisdiction of Courts	6
Ditto	Police, including police functions and responsibilities of landholders	9
Ditto	Pensions	7
Ditto	Personal obligations of the Members of the Covenanted Civil Service	4
Ditto	Native officers	4
Ditto	Rájá of Benares	3
Ditto	Nawáb Názim	3
Ditto	Miscellaneous Revenue and Customs	3

and eleven others relating to different subjects which it was perhaps unnecessary to detail here.

It would be seen that the majority of these Regulations related to land revenue. There was, he (MR. COCKERELL) believed, at the present time, a scheme under preparation in England for the consolidation of the entire revenue law of the North-Western Provinces. This work, which presumably included all the matters contained in the Regulations just referred to, would probably at no distant date become the subject of legislation by this Council. This projected Revenue Code was intended for application to the North-Western Provinces only, whereas many of these Revenue Regulations were in operation in both divisions of the Bengal Presidency. But if the Code was adopted by this Council, and superseded the existing revenue Regulations in the North-Western Provinces, the local Legislature of Bengal proper might be expected to undertake a similar consolidation of the revenue law applicable to those

Provinces, and in this way the entire body of Regulations relating to revenue might be eventually extinguished.

The twelve Regulations relating to civil judicature could be conveniently absorbed in the amendment of the Civil Procedure Code whenever we were in a position to proceed witht hat long-projected measure. As regards the Regulations relating to (1) the Constitution and Jurisdiction of the Courts, (2) Police, (3) Pensions, (4) the personal obligations of Members of the Covenanted Civil Service, (5) Ministerial and other Native officers, he (MR. COCKERELL) hoped, as soon as the present Bill was sufficiently matured to clear the way for further action, to bring forward consolidating enactments on each of these subjects.

If these measures should be eventually adopted by the Council, the Bengal Regulations would be reduced thereby to the narrowest possible limits; and MR. COCKERELL ventured to say that a most useful work, both as regards the convenience of the public and the lessening of the labours of those who had to administer the law, would have been achieved.

The Hon'ble MR. STEPHEN said that the Hon'ble Mr. Cockerell deserved the acknowledgments of the Council for the very great pains which he had taken and for the special knowledge which he had brought to bear on the preparation of his scheme. If the Bill now proposed were passed, the Regulations of Bengal would be brought to the desirable condition to which those of Madras had for some time been reduced, all the dead wood, so to speak, having been cut away. As the present number of Regulations would never be increased, one difficulty in the way of their consolidation would be absent. He hoped that the Government would soon be able to publish all the extant Bengal Regulations in one compact and well-arranged volume.

The Motion was put and agreed to.

HINDU WILLS' BILL.

The Hon'ble MR. STEPHEN moved that the further report of the Select Committee on the Hindú Wills' Bill be taken into consideration. He said that, with regard to the provisions of the Bill, he had nothing to add to what he had said at their last meeting in Calcutta. It had been thought desirable to let the Bill stand over in order to give the Government of Bengal and all persons interested in the measure ample opportunity of expressing their views thereon. No communications on the subject had reached the Legislative

Department since the 22nd of March last: the Council had waited quite long enough; and it would be wrong to postpone the passage of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN also moved that in section two, line 16, and in section three, last line, for 'May' the word 'September' be substituted.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL moved that in section two, line 13, after 'shall,' the following words be inserted:—

> 'notwithstanding anything contained in section three hundred and thirty-one of the said Act;'

He said that this amendment was rendered desirable by the provision of section three hundred and thirty-one of the Succession Act, which barred the application of the Act to the very persons to whom this Bill was intended to apply.

The Hon'ble MR. COCKERELL also moved that after section three, the following section be inserted:—

> '4. On and from that day, section two of Bengal Regulation V of 1799 shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal;'

and that the numbers of the subsequent sections be altered.

He said that the portion of the Bengal Regulation (V of 1799) which it was proposed to repeal, prohibited any interference on the part of the Civil Court with an Executor acting under a will. This provision would appear to extend to the grant of probates which would be thereby stopped. It might be said that the application of the Succession Act superseded the provision of the Regulation referred to; but the second section of the Succession Act restricted its operation to cases to which no other law for the time being in force was applicable. The proposed repeal was therefore desirable to avoid any difficulty to which this conflict of the provisions of the two enactments might give rise.

The Hon'ble MR. STEPHEN expressed his approval of Mr. Cockerell's Motions, which were then put and agreed to.

The Hon'ble Mr. Stephen then moved that the Bill as amended be passed.

The Hon'ble Mr. Cockerell said, that as his official duties had been chiefly in connection with the Lower Provinces of Bengal, to which this Bill was intended to apply, he wished to take this opportunity of expressing his great satisfaction in the course taken by his hon'ble and learned friend, the mover of the Bill, in regard to its passage through this Council. Under the strong conviction that, as the practice of disposing of property by will was greatly on the increase amongst the Hindús of Lower Bengal, the restraints imposed by the Indian Succession Act were not only applicable to those territories, but that their application was urgently needed there, he (Mr. Cockerell) advocated in Committee the extension of the Bill to its present dimensions; and when, in April last, the passage of the Bill seemed likely to be indefinitely postponed on account of the strong objections raised on the subject of perpetuities, it was on the sole ground of expediency, to prevent delay in the application of the general provisions of the Bill for regulating the wills of Hindú testators, that he moved an amendment for the temporary exclusion of the clause containing the rule against perpetuities. He was now very glad that the amendment, which he should certainly not have moved could he have anticipated so early a solution of the question, had not been agreed to. He would not, however, take up the time of the Council by saying any more on the subject of that amendment—a subject which had been so ably and exhaustively dwelt upon by his hon'ble and learned friend Mr. Stephen on a former occasion. It was quite clear, as had been said by his learned friend, that we had waited long enough for any further representation on the part of the Local Government, or any refutation by the opponents of the measure of the arguments which had been set forth in support of the clause above referred to. He considered not only that we were fully justified in proceeding to pass the Bill, but that its early coming into operation was on every account most desirable; and he was confident that the results of its working would be such as to justify the extension of its provisions to Madras and other parts of the Empire.

The Hon'ble Mr. Strachey said that he did not intend to occupy the time of the Council with any remarks upon the general question regarding which there had been, on former occasions, so much discussion. The admirable speeches of his Hon'ble friend, Mr. Stephen, had really left nothing to be said, and he was sure that every member of this Council, and every reasonable man outside its walls, would agree in thanking Mr. Stephen for the service which those speeches had done to the cause of truth and progress in this country. Those speeches had made it impossible that there should be any difference of

opinion in this Council, and had rendered it certain that the Legislature would not hesitate to refuse to take the retrograde step which had been urged upon it by a certain section of the community more distinguished for volubility than for wisdom.

There was only one point which MR. STRACHEY wished to notice, because he thought that it possessed some interest and importance, and it had not been referred to in the discussions which had taken place. The Council would remember the series of Executive and Legislative measures adopted, during the last two years of Lord Lawrence's Viceroyalty, with the object of settling the many vexed questions which had given rise to trouble and anxiety in Oudh. The last of those measures which, notwithstanding the part which he (MR. STRACHEY) had taken in originating them might, he hoped he might say, now be pronounced to have been successful,—the last of those measures was that which became law as Act I of 1869. It was intended to define the rights of the taluqdárs of Oudh in their estates, and to regulate their powers of bequest, gift and transfer. It was passed by the Legislature after the full and unreserved approval of the taluqdárs to all its provisions had been communicated to the Government by themselves. MR. STRACHEY would ask the Council to allow him to read the twelfth section of that Act.

> "12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the life-time of one or more persons living at the decease of the transferee or testator, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing transferred or bequeathed is to belong."

Now this section was identical with the rule against perpetuities contained in section one hundred and one of the Indian Succession Act, regarding the introduction of which into the present Bill there had been so much discussion.

The high-spirited nobles of Oudh had showed, on many occasions, how well and intelligently they were able to look after their own interests. They had agreed to adopt the rule against perpetuities without (so far as MR. STRACHEY remembered) the slightest objection being even raised, although every portion of the Act had formed for nearly two years the subject of constant and careful discussion with the taluqdárs. This rule, therefore, which we had been told was a violation of Hindú law and Hindú usages, and Hindú ideas of propriety, had been freely adopted by one of the most important and influential

bodies of Hindús in India, and it had been for some time past the law to which two-thirds of the landed property of Oudh was subject.

But the Oudh law went further. MR. STRACHEY would not disguise his opinion that there was one blot upon the present Bill. It placed no check upon the power of bequest to religious uses, and MR. STRACHEY thought there was no country where such checks were more required than in this; for the prevention of the gross and shameful abuses which too often occurred. He did not share the opinion that there would have been anything objectionable in placing some check in Lower Bengal upon this power of bequest, and in illustration of his opinion he would again appeal to the law of Oudh. He would read to the Council section twenty of the Act which he had already quoted—

> "20. No taluqdár or grantee, and no heir or legatee of a taluqdár or grantee, having a child, parent, brother, unmarried sister, or a nephew, being the naturally born son of a brother of such taluqdár or grantee, heir or legatee, shall have power to bequeath his estate or any part thereof or any interest therein exceeding in amount or value the sum of two thousand rupees to religious, or charitable uses, except by a Will executed not less than three months before his death, and registered within one month from the date of its execution."

Unless we were to suppose that the Hindú taluqdárs of Oudh were more enlightened than the educated gentlemen of Bengal, MR. STRACHEY could not believe that a rule which the taluqdárs were willing to apply to their own property would have been looked on in Bengal as an interference with the religion of the people.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to consolidate and amend the law relating to Coinage and the Mint:—The Hon'ble Sir R. Temple, the Hon'ble Messrs. Strachey and Cockerell, and the Mover.

The Council then adjourned to the 2nd August 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 19th July 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Tuesday, the 2nd August 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*
The Hon'ble JOHN STRACHEY.
The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.
The Hon'ble J. FITZJAMES STEPHEN, Q.C.
The Hon'ble B. H. ELLIS.
Major-General the Hon'ble H. W. NORMAN, C.B.
The Hon'ble F. R. COCKERELL.

EUROPEAN BRITISH SUBJECTS BILL.

The Hon'ble MR. STEPHEN introduced the Bill to confirm certain laws affecting European British subjects, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He had fully explained at their last meeting the object of the Bill. A telegram had since been received from the Government of Bombay, in which objections were taken to the measure in its present form. These objections appeared to him ill-founded, but their validity would be considered by the Committee.

The Motion was put and agreed to.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to amend the Indian Penal Code. He said that as the Penal Code had been in force since the beginning of 1862, a sufficient interval had passed since its enactment to enable those who had watched, or were interested in it, to form an opinion of its merits, and to discover its defects. He had himself been led by circumstances to study the whole subject of criminal law with particular attention, and he was glad to be

able publicly to express his opinion that the Indian Penal Code was a far better and more philosophical system of criminal law than any other with which he was acquainted, and in particular than any of the systems which were in force in England, France, or America. At the same time it appeared to him to be defective in some particulars. He thought that some of its defects were of considerable practical importance, and required an immediate remedy; others, though serious, were of a sort which might be remedied at leisure. He had given considerable attention to the subject, and should be prepared, he hoped, at no very distant time to make certain suggestions as to the propriety of re-casting the Chapters relating to Homicide, Theft, and the infliction of bodily harm; those suggestions, however, would be made rather from the juridical point of view than with the object of meeting any immediate and pressing want. There were, however, other defects in the Code, which he thought it desirable to remedy at once, as he believed that they were actually producing, in some instances, serious miscarriages of justice, and as they certainly might at any moment result in very serious mischief. He would shortly go through the sections of the proposed Bill, and explain the intention of each of them.

Section three of the Code provided that any person liable by *any law passed by the Governor General in Council* to be tried for an offence committed beyond the limits of British India, should be dealt with as if the act had been committed within British India. As cases might arise in which persons might be tried in India for an offence committed out of India (at sea for instance) not against any law passed by the Governor General in Council, but against other laws the breach of which the Courts in India have power to punish, it was thought best to extend the section to those cases.

Section thirty-four of the Code provided that when a criminal act was done by several persons, each was liable as if he alone had done the act. It was proposed to modify this section so as to make it apply in terms to acts done "in furtherance of the common intention of all." It appeared from a judgment of Sir Barnes Peacock that this was the true meaning of the section, and it was thought better to express it.

The definition of the word "offence," which frequently occurred in the Penal Code, was enlarged by Act IV of 1867. It was proposed to embody the enlarged definition in the interpretation clause of the Penal Code.

Section fifty-six of the Code provided that Europeans and Americans should be sentenced to penal servitude, instead of transportation according to

the provisions of Act XXIV of 1865. This Act provided that, instead of a term of transportation not exceeding ten years, penal servitude for a term not exceeding six years should be inflicted, and instead of a term of transportation not exceeding fifteen years, penal servitude not exceeding ten. Now the Courts could award transportation for a term exceeding ten years, but short of life under five sections only. Hence in most cases European and American offenders could not be sentenced to penal servitude for any term intermediate between six years and life. This defect it was proposed to remove by a very simple proviso.

The two next sections were of great importance. For the first of these MR. STEPHEN was personally responsible. The second had been omitted by pure accident when the Code was passed. Each related to the punishment of political offences. Section one hundred and twenty-one of the Code punished with death or transportation for life and forfeiture of property—waging of war against the Queen, attempts to wage war, and abetment of waging of war. Now one form of abetment was conspiracy coupled with any act or illegal omission done in pursuance of that conspiracy. The effect of this was, that the Code apparently did not punish at all a mere conspiracy to wage war, nor did it punish any treasonable practice or conspiracy short of an attempt to wage war. Moreover, there was a good deal of obscurity about the phrase "wage war against the Queen." By the 25th Edward III, by which the law of treason in England was defined, waging war was one form of treason, and many cases, especially in the early part of the eighteenth century, had been decided as to the meaning of those words. Whether or not these cases would be held to apply to section 121 of the Penal Code, if the necessity for putting a judicial construction upon it should unhappily arise, was a question which MR. STEPHEN did not wish to discuss; but as he thought the English Judges had somewhat strained the law in their desire to find out means of inflicting appropriate punishment upon a most serious crime, he thought it would be a pity if the cases in question came under discussion in Indian Courts.

He proposed to remove these defects by a section adapted from the Treason-Felony Act passed in England in 1848. This section would punish, with the severest secondary punishment, conspiracies to deprive Her Majesty of the sovereignty of British India, or of any part thereof, and the waging, or abetment of the waging, or conspiracy to wage, civil war. The term "civil war" was defined to imply permanent and organized hostile operations carried on, for whatever purpose, by one section of the community against another. No act or omission would be necessary to make such conspiracies criminal.

It would be sufficient to prove as against any person the existence of such a conspiracy anywhere within or without British India, and his participation in it by any act which could show his knowledge and approval of the designs of the conspirators. MR. STEPHEN thought that no argument was required to prove that a conspiracy to bring about such a series of events as those of 1857 was as great a crime as could well be committed. The conspirators in such cases were usually more dangerous and more criminal than the instruments who carried out, in practice, their wicked designs.

The next section was one which, by some unaccountable mistake, had been omitted from the Penal Code as ultimately passed. It stood as section 113 in the draft Code published in 1837, and Sir Barnes Peacock was quite unable to account for its omission when the Code was enacted. It punished "attempts to excite feelings of disaffection to the Government," but it distinguished between disaffection and disapprobation, and explained that "such a disapprobation of the measures of the Government as was compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, was not disaffection," so that "the making of comments on the measures of the Government with the intention of exciting only this species of disapprobation was not an offence within this section."

Nothing could be further from the wish of the Government of India than to check, in the least degree, any criticism of their measures, however severe and hostile, nay, however disingenuous, unfair, and ill-informed it might be. So long as a writer or speaker neither directly nor indirectly suggested or intended to produce the use of force, he did not fall within this section. This, however, must be coupled with a warning. The question on trials under this section would always be as to the true intention of a speaker or writer, and this intention would have to be inferred from the circumstances of the case. The most bitter and unfair criticisms published by a newspaper in the common course of its business, might be perfectly compatible with the absence of any intention to advise resistance to lawful authority. Language, temperate in itself and justifiable as far as the express meaning of its terms went, might, if addressed to an excited mob, be the clearest proof of an intent to produce forcible resistance to authority. Whilst genuine criticism had nothing to fear from the proposed section, persons seditiously disposed must not suppose that they could evade its provisions by confining themselves to what, under other circumstances and in other persons, might be genuine criticism.

Passing over a few alterations of minor importance, MR. STEPHEN came to section eleven of the proposed Bill. It proposed to add the material part of the Lottery Act V of 1844 to the Chapter on Public Nuisances, and to repeal the Act itself. He did not know how this Act came to have been omitted from the Code.

The three hundred and seventh section of the Penal Code punished attempts to murder with transportation for life. Two prisoners under sentence of transportation for life,—one at the Andaman Islands, the other in Sindh,—had lately made desperate attempts to commit murder. In one case a most deserving gaol guard had been maimed for life, and had all but died in consequence of the brutal violence inflicted on him. In such cases no punishment at all could be inflicted on the criminal, as it mattered nothing to him how often he was sentenced to be transported for life. MR. STEPHEN proposed to punish such offenders with death.

The last addition which he proposed to make in the present Bill was to the Law of Homicide. The Penal Code strangely omitted to punish what, in England, would be called manslaughter by negligence. If a man killed another by any act which he knew to be likely to cause death, he committed culpable homicide; but if he caused death rashly or by negligence, he committed no offence at all. This was the more remarkable, as punishments were provided for causing hurt, or grievous hurt, by rash and negligent acts, and as in the draft prepared by Lord Macaulay there was a section which punished the offence now in question. By what accident it had been omitted, MR. STEPHEN did not know. He proposed now to insert such a section. One reason for doing so was, that the Judges had adopted a plan for evading the law which, though ingenious, and, perhaps, necessary, was, he thought, objectionable. They convicted prisoners who had caused death by a rash or negligent act of causing 'grievous hurt' by a rash or negligent act. MR. STEPHEN had heard a Judge direct a Jury that to cause death was "to cause grievous hurt and more." This, he thought, was perfectly good sense; but as the Code defined "grievous hurt" to mean eight specified injuries, he thought it very questionable law. To convict a man who by rashness caused another to be drowned, of having 'deprived him of the sight of one of his eyes,' or of having "caused him to be unable for twenty days to follow his ordinary pursuits," was, to say the least, grotesque. MR. STEPHEN proposed to remedy the omission by providing expressly for the case of causing death by any rash or negligent act.

The motion was put and agreed to.

OUDH TALUQDARS RELIEF BILL.

The Hon'ble Mr. Strachey asked leave to postpone the presentation of the Report of the Select Committee to which the Bill for the relief of certain taluqdárs in Oudh had been referred.

Leave was granted.

BENGAL REGULATIONS REPEAL BILL.

The Hon'ble Mr. Cockerell introduced the Bill for repealing certain enactments of the Bengal Code, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that this Bill purported to remove from the Statute-book all the Regulations, or parts of Regulations, of the Bengal Code, which (1) through lapse of time or change of circumstances, had become inoperative, or (2) though not expressly repealed, had been virtually superseded by other provisions of the existing law, or which (3) operated merely to rescind other enactments.

Within one or other of these classes were comprehended all the enactments specified in the Schedules.

He would not at the present time go into the details of these Regulations, which it was proposed to repeal either wholly or in part, further than to notice that some of them at least would appear to have been purposely left out of former repealing Acts, and to state the considerations upon which their repeal was now recommended.

As instances of such omissions, he might cite Regulations VI and IX of 1793 which came within the first, and certain provisions of Regulation IV of 1793 and other cognate enactments which belonged to the second, of the classes above referred to.

Regulations VI and IX of 1793 related to the constitution and function of the late Sadr Díwání and Nizámat Adálat. Although these Courts had been replaced by the High Court, the Regulations which treated of the constitution and functions of the former had clearly no application to the latter whose position and duties were regulated by English statute and letters patent.

In this view, the corresponding Regulations of the Madras Code had been repealed by the local legislature, which, it might here be remarked, could those

enactments have been held to apply to the High Court, would have had no power to affect them by its legislation.

The other Regulations above-mentioned provided special penalties for the resistance by a landholder of the process of the Zila Court. Now, the resistance of a Court's process was an offence under the Indian Penal Code, and by the second section of that Code every act done contrary to the provisions thereof was punishable thereunder *and not otherwise.*

It was difficult to understand why, when in accordance with the rule laid down in that section, the other penal provisions of the then existing law were repealed, these enactments were left. It was certain that the extreme penalties which they contained had long since fallen into disuse; in some of the decisions of the High Court, the doubt had been raised as to whether the provisions of those Regulations in regard to the contempt of Court by resistance of its process, could be held to be still in force though they had not been expressly repealed, and it had been shown that at all events their operation was confined to cases of resistance of the process of the Court of the District Judge. When it was considered that these Courts formed a not inconsiderable minority of the Courts in which the litigation of the territories affected by these Regulations was carried on, the above-mentioned consideration afforded in itself a sufficient argument for abrogating these special penalties; for it was obviously inexpedient to maintain different measures of punishment for the same offence, the application of which was regulated solely by the status of the Court against whose lawful authority such offence had been committed.

He need only add that if the Bill was committed, it was desirable that it should be sent, in the first instance, to the Local Governments of Bengal and the North-Western Provinces.

The Schedules had been carefully prepared with the aid of such local experience as he had been able to bring to bear on their subject, and it was hoped that they would be found to contain every enactment that it was possible to dispense with. A measure of this kind, however, needed in an especial manner the review and criticisms of local experts ere the Committee could be in a position to deal satisfactorily with its details.

We needed to be certified that a wholesome zeal for cutting away the "dry wood" and so compacting the statutory plantation did not result in the destruction of anything that was of practical use at the present time.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to confirm certain laws affecting European British subjects—the Hon'ble Messrs. Ellis, Cockerell, and the Mover.

On the Bill for repealing certain enactments of the Bengal Code—the Hon'ble Mr. Stephen and the Mover.

The Council then adjourned to the 16th August 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 2nd August 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Tuesday, the 16th August 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *Presiding.*
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble J. Fitzjames Stephen, Q.C.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
His Highness Sarámade Rájáhae Hindustán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur of Jaypúr, G.C.S.I.

OUDH TALUQDARS' RELIEF BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill to relieve from incumbrances the estates of taluqdárs in Oudh.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN introduced the Bill to amend the Indian Penal Code, and moved that it be referred to a Select Committee with instructions to report in a month. He had so fully described the Bill when he moved for leave to introduce it, that he would reserve his further observations until the Select Committee should have made its report.

The Motion was put and agreed to.

LOCAL ACTS CONFIRMATION BILL.

The Hon'ble MR. STEPHEN presented the Report of the Select Committee on the Bill to confirm certain laws affecting European British subjects.

REGISTRATION LAW CONSOLIDATION BILL.

The Hon'ble Mr. Stephen moved for leave to introduce a Bill to consolidate and amend the laws relating to the Registration of Assurances. A draft Bill to exempt title deeds issued by the Inám Commissioner in the Presidency of Fort Saint George from compulsory registration under the Indian Registration Act, 1866, had been recently sent up by the Madras Government with a request that it might be passed by the Governor General's Legislative Council. A somewhat similar enactment had already been passed as Act No. XXVII of 1868, and it was thought preferable to adding a third Act on the subject to the Statute Book to take this opportunity of consolidating and amending the whole law relating to registration. The present was one of three consolidation Bills which he hoped to obtain leave to introduce. When these, and the two great Bills to consolidate the laws relating to Civil and Criminal Procedure, and the other Bills now before the Council, were passed, and when two comparatively unimportant measures relating to Paper Currency and Cattle Trespass had also become law, the process of consolidation, so far as regarded the Acts of the Governor General in Council, would be complete. A similar process, so far as regarded the Bengal Regulations, was now far advanced, thanks chiefly to the industry and knowledge of his Hon'ble friend Mr. Cockerell. The several collections of the rules and orders which, under the Indian Councils' Act, had obtained the force of law in the North-Western Provinces, the Panjáb, Oudh, the Central Provinces and British Burma, would soon be finished, and the result of the whole process would, Mr. Stephen hoped and believed, be eminently satisfactory to the profession and to the public.

The Motion was put and agreed to.

MARRIAGE LAW CONSOLIDATION BILL.

The Hon'ble Mr. Stephen moved for leave to introduce a Bill to consolidate and amend the law relating to marriage. That law, so far as regarded Christians (and to them alone the present Bill would apply), was now contained in one Statute (14 & 15 Vic., cap. XL) and in two Acts (V of 1852 and V of 1865). To these might be added the obsolete Statute as to marriages solemnized by ministers of the Church of Scotland, 58 Geo. III., cap. 84.

The Motion was put and agreed to.

CORONERS LAW CONSOLIDATION BILL.

The Hon'ble Mr. Stephen also moved for leave to introduce a Bill to consolidate the laws relating to Coroners. Those laws were 33 Geo. III, cap. 52,

section 157; 9 Geo. IV, cap. 74, sections 5 and 6; Act IV of 1848 and Act XLV of 1850.

The Motion was put and agreed to.

SEA CUSTOMS CONSOLIDATION BILL.

The Hon'ble SIR R. TEMPLE moved for leave to introduce a Bill to consolidate and amend the law relating to Sea Customs. He said that the Consolidated Customs Act of 1863 had already been more than once amended, and certain further amendments having been found necessary, the present Bill would consolidate the whole law on the subject, and make the following changes:—

'Magistrate' would be defined so as to include expressly a Magistrate of Police in the Presidency Towns.

The Local Government would be empowered to declare what should, for the purposes of the Act, be deemed to be the limits of the Custom House.

Section 23 of Act VI of 1863 authorised the Government of India to prohibit the exportation or importation of any particular class of goods. To prevent a doubt which had been raised as to the extent of the power thus intended to be conferred, the words 'by sea or by land, or both by sea and by land,' would be introduced.

In section twenty-seven, for 'Local Government' the 'Customs Duties' Act, 1870' would be substituted.

A new section would provide that, when goods were warehoused, a warrant should be delivered to the person lodging the goods, and that such warrant should be transferable by endorsement. This was now the law as regards the Bengal Bonded Warehouse. He had reason to know that the change would be welcomed by the mercantile community of Bombay.

Another section, equivalent to section 137 of Act VI of 1863, would provide that the goods on which drawback was allowed should be easily identifiable; that the Governor General in Council might determine what such goods should be deemed to be, and that three-fourths (instead of seven-eighths) should be the amount of drawback, one-fourth (instead of one-eighth) being retained as reserved duty.

Various verbal amendments would be made, and the Bill would be so printed as to facilitate perusal.

Eight Acts and parts of Acts would be repealed and consolidated, and to these he hoped, if the Bill were referred to a Select Committee, to add two other Acts and an old Bengal Regulation. It was needless to dwell on the importance of having all the law on such a subject within the four corners of a single enactment.

The Motion was put and agreed to.

PRISONS' BILL.

The Hon'ble MR. COCKERELL moved that the Hon'ble Messrs. Strachey and Ellis be added to the Select Committee on the Bill to amend the law relating to Prisons in the Panjáb and the Provinces under the immediate administration of the Government of India.

The Motion was put and agreed to.

PRISONERS' BILL.

The Hon'ble MR. COCKERELL asked leave to postpone his motion for leave to introduce a Bill to consolidate the laws relating to prisoners.

Leave was granted.

The following Select Committee was named:—On the Bill to amend the Indian Penal Code, the Hon'ble Messrs. Strachey, Ellis, Cockerell and the Mover.

The Council then adjourned to the 30th August 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA;
The 16*th August* 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Tuesday, the 30th August 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *Presiding.*
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble J. Fitzjames Stephen, Q.C.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
His Highness the Hon'ble Sarámade Rájáhae Hindustán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur of Jaypúr, G.C.S.I.

OUDH TALUQDARS' RELIEF BILL.

The Hon'ble MR. STRACHEY asked leave to postpone his motions relating to the Bill to relieve from incumbrances the estates of taluqdárs in Oudh.

Leave was granted.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN presented the Report of the Select Committee on the Bill to amend the Indian Penal Code.

COINAGE AND MINT BILL.

The Hon'ble MR. STEPHEN presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Coinage and the Mint,

EUROPEAN BRITISH SUBJECTS' BILL.

The Hon'ble Mr. Stephen moved that the Report of the Select Committee on the Bill to confirm certain laws affecting European British subjects be taken into consideration. He said that he need not return to the general question involved in the Bill, but some remarks had been made on it which appeared to require notice. It was said that the Bill was defective in so far as it did not confirm the future Acts of the local legislatures. But the answer to this was, that under the Indian Councils' Act the Governor General in Council had no power to do so. The Government of India would address the Secretary of State with a view to the introduction into Parliament of a Bill to confer power on the local legislatures to deal with European British offenders.

Another objection raised to the Bill was, that it would prevent the local legislatures from modifying their penal Acts heretofore passed, so far at least as those Acts related to European British subjects. This was perfectly true, but the evil was inevitable, and we had to choose the least of two inconveniences. The Secretary of State would be moved to insert in the Bill, to which Mr. Stephen had referred, a clause enabling the local legislatures to modify those Acts notwithstanding their having been affected by an Act of the Governor General in Council. Lastly, the Governor of Bombay had objected that the present Bill, in so far as it purported to confirm invalid local legislation, was beyond the power of the Council of the Governor General as limited by the Indian Councils' Act. But this objection, Mr. Stephen thought, rested on a misapprehension. What the legislature of the Governor General proposed to do on this occasion was simply to adopt certain local Acts as its own; and the Bill did not affect in any way the provisions of the Indian Councils' Act.

The Motion was put and agreed to.

The Hon'ble Mr. Stephen then moved the following amendments:—

That the following words be added to section one:—

"And as if it expressly referred to European British subjects;"

And that the following sections be inserted after section one of the Bill:—

'2. Unless there be something repugnant in the context, all Acts heretofore or hereafter passed by the Governor General in Council, which confer summary jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.'

'3. Act No. XVIII of 1859 *(to amend the law relating to offences declared to be punishable on conviction before a Magistrate)* shall be construed as if, in sections one, two and four, after the word 'heretofore' the words 'or hereafter' were inserted.'

And that the numbering of the subsequent sections be altered.

These amendments were rendered desirable by a very recent decision of the High Court at Madras, of which information had been received unofficially, since the Committee had signed their Report, from Mr. Mayne, the learned Secretary to the Legislative Council of the Governor of Madras. The Madras High Court, it seems, had held that even Acts of the Governor General in Council giving summary jurisdiction over offences did not apply to European British subjects, unless such subjects were expressly named therein. Mr. Mayne had also pointed out the anomalous state of things produced by the fact that Act XVIII of 1859 (as to offences made punishable on conviction before a Magistrate) applied only to enactments passed before the 25th of July 1859. The amendments which MR. STEPHEN now proposed would meet the two difficulties thus raised.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then said that the adoption of the first of the amendments just carried, rendered necessary two formal amendments: one in the preamble, the other in section one, and he would accordingly move that the following words be inserted in the preamble:—"and whereas doubts have also been raised as to the application to European British subjects of certain Acts of the Governor General in Council:"

and that in section one, line one, after "Act" the following words be inserted:—

"passed by the Governor of the Presidency of Madras in Council, or by the Governor of the Presidency of Bombay in Council, or by the Lieutenant-Governor of Bengal in Council."

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN then moved that the Bill as amended be passed.

The Hon'ble MR. COCKERELL said that he believed that the words "unless there be something repugnant in the context," which occurred in the first

line of the first amendment, excluded its application to the Code of Criminal Procedure. He had himself no doubt as to this being the effect of those words; but he thought it right to draw special attention to the subject, and to appeal to his Hon'ble and learned friend, the Mover of the Bill, for a confirmation of his (MR. COCKERELL's) impression, inasmuch as if the full effect of these words was overlooked or imperfectly understood, the idea might get abroad that, through the instrumentality of this Bill, a serious alteration of the law was being brought about. That in short by a sort of side-wind, that is to say, in the form of a hurried amendment of a Bill, in the original form of which no alteration had been proposed by the Select Committee, an attempt was being made to render the European British subject liable to be tried and convicted by tribunals to whose jurisdiction he had never been previously subjected, and to which the propriety of his subjection had been so much canvassed in the discussions which preceded past legislation in this matter.

The criminal law of this country was, as the Council knew, now entirely to be found in, first, the Penal Code and the Criminal Procedure Code (by which latter the jurisdiction in respect of offences made punishable under the former was regulated) which were general, and, second, the various Municipal and Police Acts, the enactments regarding offences against the Revenue, and the laws relating to Military Cantonments (some of which had been enacted by this Council and others by the local legislatures), which were all of mere local application.

Now, the punishments to which persons were liable for offences under this last class of enactments, *i. e.*, enactments the operation of which was confined to particular localities, were, with rare exceptions (notably certain sections of the Calcutta Police Act IV of 1866), fines of greater or less amount in the first place, and imprisonment only in default of payment.

The Bill, therefore, in declaring the European British subject equally with other persons liable to summary conviction and punishment under these laws, in no way infringed, or went beyond, the principle of past legislation—such as for example 53 Geo. III., cap. 155, sec. 105, and Act VII of 1853—in this matter.

But if the amendment were to include the Criminal Procedure Code as an 'Act heretofore passed by the Governor General in Council conferring summary jurisdiction over offences,' the case would be very different, and its effect would be to bring about a grave alteration of the law without due notice or consideration.

The Hon'ble MR. STEPHEN said that the only effect of the Bill was to make the law as to European British subjects that which, till lately, every one

had supposed it to be. It increased no powers of punishment possessed, or supposed to be possessed, by Magistrates, and it did not confer jurisdiction on any Magistrate who was not a Justice of the Peace. The Code of Criminal Procedure was clearly not affected by the Bill as now amended.

The Motion was put and agreed to.

INSOLVENCY BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to amend the law relating to insolvency. He said that the law relating to insolvency, as it stood at present, was contained, as regarded the three Presidency Towns, in an Act of Parliament, 11 & 12 Vic., cap. 21, which had been adapted to the circumstances of the Presidencies from the English laws relating to bankruptcy then in force. As regarded the Mofussil in general there was no law of insolvency; but there was a section in the Code of Civil Procedure which, to a certain extent, answered the same purpose. This was section 271, which provided that 'if after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof: Provided that when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.' In illustration of the objections to the manner in which this section worked as a substitute for a Bankruptcy Act, he might refer to an able pamphlet lately published by Mr. Broughton, the Administrator General of Bengal, upon the state of the law in the Non-Regulation Provinces. Mr. Broughton's remarks were as follows:—

"By that Law [*i. e.*, Act VIII of 1859, sec. 271] the first creditor who "gets a decree and takes out execution is entitled to be paid in full, while "the rest come in *pari passu* and divide what is left. As a natural consequence "in places where there is no Insolvent Law, that is to say, in all India, except "the three cities of Calcutta, Madras, and Bombay, there is no sooner a rumour "of a trader being in difficulties than all his creditors in self-defence rush into "Court and contend among themselves for the first decree against him; his "property is attached and sold on the spot, always at a considerable loss, and "the rival claims of different creditors often produce a contest, sometimes "carried out to physical extremities. Perishable goods are hurried away at the "best to improper receptacles, and in most instances are considerably damaged, "while the judgment-debtor, to avoid these disastrous consequences, finding

" that his property is unprotected by the Law, is tempted to resort to all sorts " of fraud and chicanery to avoid the consequences of his position. In the " early part of the year 1867 this change in the Law operated in a manner " which for the time caused a complete paralysis in the trade of Rangoon, and " flooded the Courts with litigation."

There were also provisions as to insolvency in some particular provinces. For instance, the document called the Civil Code of the Panjáb contained such provisions, and others of a similar character comprised in what was called Sparks's Code, after its author, Major Sparks, had been in force in British Burma. The validity of the Panjáb provisions was, as he (MR. STEPHEN) believed, at the present moment under the consideration of the Chief Court of that province, and there would seem to be considerable doubt as to the legal force of many parts of the Code, upon which different decisions had been given by various authorities. The Burmese Code, and especially that part of it which related to the subject of bankruptcy, had been superseded in Burma by the introduction of the Code of Civil Procedure and Act I of 1863.

The general extension of commerce into various parts of India, and the variety of the provisions which at present obtained upon the subject, suggested the propriety of introducing a general measure. The one which he now asked leave to introduce had been adapted from the Bill passed last year in England, which might be regarded as embodying the result of controversies carried on, and of experience acquired for upwards of three centuries; for the first English Bankruptcy Act was 34 & 35 Henry VIII, cap. 4, passed in the year 1542-43, and the last was passed in 1869. During the interval between these dates, and especially during the last half century, the subject had been almost continually under discussion, and a long series of important changes had been made in the arrangements by which the object of dividing the property of an insolvent amongst his creditors had been attained.

The system finally arrived at, which it was proposed to introduce into British India, had, at all events, the merit of simplicity, and as, he (MR. STEPHEN) thought, of common sense and justice. Its essential provisions might be stated in a very few words, although unfortunately when they were thrown into a legal shape, and when the persons appointed to act under the Bill had been armed by express provisions with all the necessary powers, the result was a measure of somewhat formidable dimensions.

In a few words the system proposed to be established was as follows:— When a man committed any one of a certain number of acts of insolvency and

was unable to meet his engagements, he might be adjudicated an insolvent upon a petition by his creditors. His property would upon adjudication pass to a trustee, whose duty it would be to realize it under the inspection, and according to the directions, of a committee of creditors, and to divide it amongst them rateably. If the dividend paid amounted to eight annas in the rupee, or if the creditors were of opinion that the failure to pay so high a dividend arose from circumstances for which the insolvent could not justly be held responsible, and if they desired his discharge to be granted, he could be discharged. If a smaller dividend were paid, the insolvent would have three years in which to make up his payments to the amount in question, and any balance that remained unpaid at the end of that period would constitute a judgment-debt, which might be enforced by leave of the court. English experience seemed to point to the conclusion (after many experiments), that this was a fair compromise between the object of favouring commerce and the object of enforcing a complete execution of the contracts into which a trader might enter.

These were the main provisions of the Bill, but it contained other provisions, which were unavoidably rather long, upon the various points which it was necessary to provide for, in order that the scheme might be properly worked, such as the appointment and powers of trustees, the meetings of creditors, the effects of insolvency upon the property of the insolvent and that of other persons, the distribution of assets and the jurisdiction of the courts. Provisions also were inserted to enable creditors, if they thought fit, to take the matter entirely into their own hands, and to provide, by a process which had been called liquidation by arrangement, for the objects contemplated by the law.

Every effort had been made to render the Bill complete in itself, so that all the law upon the subject might be contained in one measure, and that as little necessity as possible might exist for subsidiary legislation by the courts in the shape of rules of procedure.

The reason for introducing the Bill at Simla was that it might be published as early as possible in the *Gazette*, so that the Government might have the advantage of receiving the opinions and advice of the mercantile community in general, and especially of the three Chambers of Commerce, before the measure was discussed in committee.

There was only one other subject which he (MR. STEPHEN) need mention. He proposed to follow the English example of separating the two questions of the distribution of an insolvent's assets, and the punishment of fraudulent

debtors. The latter question would be dealt with separately, and if it were decided to revise the Penal Code, the addition of several provisions upon this subject would form an important part of that process.

The Council then adjourned to the 6th September 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA;
The 30*th August* 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Tuesday, the 6th September 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *Presiding.*
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble J. Fitzjames Stephen, Q.C.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
His Highness the Hon'ble Sarámade Rájáhae Hindustán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur of Jaypúr, G.C.S.I.

OUDH TALUQDARS' RELIEF BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Taluqdárs in Oudh be taken into consideration. He said that the Report described the alterations which it was proposed to make in the Bill. He need not refer to them in detail, because, for the most part, they left the main features of the Bill unchanged. There were, however, a few points which required notice.

An important alteration had been made in section three. As the Bill originally stood, no limit of time was prescribed within which the provisions of the Bill might be made applicable. Since, however, this measure was avowedly of an altogether exceptional character, it seemed right to restrict its operation within such limits as were compatible with the object which it was intended to effect. It was proposed to limit to twelve months after the passing of the Act

the time within which applications must be made. The result would be, if this alteration were approved by the Council, that, although the Government would be prepared to help the Taluqdárs out of their present difficulties by these exceptional measures, it would not continue to do so permanently. If any Taluqdár omitted to avail himself of the opportunity offered to him, or if after the term stated in the Bill had elapsed, he chose to involve his estate in embarrassment, he would have no right to expect that the Government would again interfere to save him from the consequences of his own folly.

When the Bill was introduced he (MR. STRACHEY) said that it would be a question for consideration whether authority might not be given to the Executive Government to extend the provisions of the Bill under certain circumstances for the relief of estates of great and ancient families in other parts of the country.

Representations had been made by more than one Local Government urging the expediency of this course; but, on full consideration of the question, the Government did not think that any such general extension of the provisions of this measure would be expedient.

It had always been stated that this Bill was introduced for political reasons of an altogether exceptional character, and those reasons were recognised by the late Viceroy, Lord Lawrence, at the last meeting of the Legislative Council at which he was present, as justifying the special interference of the Government.

He (MR. STRACHEY) did not deny that strong political reasons for similar interference might exist in some cases in other provinces, and on more than one occasion lately the Government had endeavoured to assist the heads of ancient families, to whom the people looked up as their natural heads, with the object of relieving them from their difficulties. A law, however, which might be applied generally or arbitrarily at the will of the Executive Government to save landholders from the consequences of their own improvidence, would hardly be justifiable.

The economical results of such a general measure might be very mischievous indeed: it was, perhaps, hardly too much to say that the value of landed property throughout the country might be affected by the passing of such a law. The security, for instance, of mortgagees would be diminished, if at the will of the Executive Government the mortgagee might at any time be compelled to give up his interest, to receive his money, and seek some other investment.

Even as regards Oudh the economical objections to the present Bill could not be denied, but the political reasons which had been held to justify it were altogether peculiar.

He (MR. STRACHEY) asked the Council to remember the origin of the tenure on which the Taluqdárs of Oudh held their estates. They did not hold them by ancient ancestral right. Their rights were entirely created by the British Government itself, and they were held by the free gift of the British Government alone. All rights of property which the Taluqdárs formerly possessed in the land were confiscated by the famous proclamation of Lord Canning in 1858 as a punishment for their rebellion, and every right of property which these Taluqdárs now possessed, they derived from the free gift of Lord Canning's government.

It was the avowed policy of that Government to recreate in Oudh a great aristocracy holding its estates by a tenure of English type unknown to the Hindú or Muhammadan Law, or to the ancient custom of Oudh itself.

The Law of Primogeniture, in a form unknown in any part of India, was established, and the rights of all other parties in the soil were either swept away, or were to be held in entire subordination of the Taluqdárs.

Every Taluqdár received unrestricted powers of disposing of his estate as he pleased. These powers were at variance in their nature both with Hindú law and custom, and with the customs of Oudh itself, and they were practically more extensive than those possessed by almost any great landholder in England itself.

Sir Charles Wingfield, who migh tbe considered, to a certain extent, as the originator of the policy followed after the mutinies in Oudh, strongly protested against giving the Taluqdárs these unlimited powers of disposing of their estates. These powers went very far beyond what he desired, and he predicted (and there was certainly no man living who had a better right to speak upon the subject) that the almost inevitable result of removing the checks imposed by Hindú law and custom on the disposal of ancestral property, would be the ultimate ruin of the families which the British Government desired to maintain. The government of Lord Canning, however, insisted on placing the Taluqdárs in this altogether exceptional position.

The promises made by that Government had to be fulfilled, and they were strictly and scrupulously fulfilled by the government of Lord Lawrence, which,

by the passing of Act I of 1869, gave the force of law to all the engagements which had been entered into with the Taluqdárs. Whether these engagements were wise, time alone could shew; and this was not now a question for discussion.

The result of all that had been done was, that a great experiment was being tried in Oudh, and it was the duty of the Government, which by its own acts had created the existing state of things, to give that experiment every fair chance, and to endeavour to remove all removeable difficulties which might interfere with the possibilities of its success.

This was the object and justification of the present Bill.

It had been ascertained beyond doubt that many of the Taluqdárs of Oudh were so deeply in debt, and their estates were now subjected to such heavy incumbrances, that it was impossible for them to perform their functions as landholders, and that unless some relief was given to them their estates would, sooner or later, be lost to them and pass into the hands of money-lenders and strangers. Thus the political objects with which the system now existing in Oudh was created by the government of Lord Canning would be defeated.

This Bill, if it became law, would give the Taluqdárs of Oudh a chance of recovering and maintaining their position.

The experience that had been gained by the Act of 1862, passed by the Bombay Legislature for the relief of the Taluqdárs of Ahmedabad, on which the present Bill was founded, showed, as he (MR. STRACHEY) had explained on former occasions, that, without any sacrifice of the just rights of creditors, we might hope to free the estates of the Oudh Taluqdárs from their present heavy incumbrances.

The Hon'ble MR. COCKERELL said that, although he had joined the other Member of the Select Committee in recommending the adoption of the amended Bill by the Council, he was far from thinking it as perfect a measure as, even consistently with its political object, it might be; and, in reference to what had fallen from his Hon'ble friend the Mover in regard to its extension to other places, he (MR. COCKERELL) thought we did well to confine its operation to the territories within which, on special political considerations, it was originally designed to have effect.

The great defect of the Bill, as seemed to him, was its want of any provision for the due protection of the interests of the creditors of the indebted Taluqdárs whose estates might be brought under its provisions.

It was doubtless essential to the attainment of the object of this legislation that the action of the civil courts should be barred as was provided by section four of the Bill, and, perhaps, even the enforced surrender by the mortgagee in possession required by section seventeen could not in that view be avoided; but he (MR. COCKERELL) was of opinion that it was not necessary to hand the creditors over to the tender mercies of the manager (tempered only by the control of the Chief Commissioner) so unreservedly as was done by section eleven.

It seemed to him that the creditors, whose ordinary remedy for the assertion of their rights was wholly barred by the combined operation of sections four and twenty-three, and especially the mortgagees who might be deprived of the possession of the property mortgaged to them, were equitably entitled to the protection of some stipulations in regard to the liquidation of their admitted claims by the manager. As the Bill stood, there was no guarantee that the liquidators would be guided by such considerations, in regard to conditions of interest on the loans to the Taluqdárs, priority of lien on their property and other matters, as would be taken into account in the adjudication of the creditors' claims by the civil court; or that the dispossessed mortgagee who had secured himself in his transactions with the Taluqdár, would be in any better position as regards the recovery of his loan than the other creditors who had no such security.

It had been suggested that the omissions of the Bill in this respect could and would be remedied by the rules to be framed under section twenty. He (MR. COCKERELL) confessed he should have preferred to see the required protection directly secured by the Bill itself.

He did not propose, however, to move any amendment in this sense, but he had thought it right to draw the attention of the Council to the subject, in the hope of eliciting from the Hon'ble mover of the Bill a public declaration that it was the intention of the Chief Executive Government to insist upon the rules to be made under section twenty being so framed as to secure as much protection to the interests of the creditors as was compatible with the political objects of this legislation.

The Hon'ble MR. STEPHEN said that there would be no serious practical difficulty in making rules to carry out Mr. Cockerell's object. It certainly

was not the wish of Government to put mortgagees and other secured creditors in a position worse than that which they would have held if the Bill were not passed. But if the Government or the Select Committee had embodied all these rules in the Bill, the measure would necessarily have become elaborate and even cumbrous. The Bill, to a great extent, would have become an Insolvency Bill, and the rules contained in it would, he (MR. STEPHEN) feared, have some times been unintelligible to those who would have to work the present measure. The Local Government would make the necessary rules with a practical regard to the necessities of the case, and before these rules came into force, they would be carefully scrutinized by the Legislative Department.

The Hon'ble MR. STRACHEY wished to add only a few words to what had been said by his Hon'ble friend, Mr. Stephen; and he need say nothing further as to the reasons for which it seemed desirable to leave to the Chief Commissioner and to the Government to provide by rules for all matters of detail which will arise in carrying out the provisions of this Bill.

He was extremely glad that his Hon'ble friend, Mr. Cockerell, had referred prominently to this very important part of the question.

He thought, as to the points to which he had alluded, there could be no possible difference of opinion. To sacrifice the legitimate claims of honest creditors for the purpose of saving the Taluqdárs of Oudh from the consequences of their own folly and improvidence, would be, he thought, not only morally and economically but politically wrong. The objects of this measure were political, and it might safely be asserted that the British Government could never gain politically by adopting measures involving wholesale and deliberate injustice to honest men. It would be the duty of the Local Government in framing rules under section twenty of the Bill, and in supervising the operation of all the measures that were adopted, to take every possible care that the just rights of creditors were respected.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved the following amendment:—

That the following words be added to clause four of section twelve:—

"and any mortgagee dispossessed under section seventeen shall be reinstated, unless his claim under the mortgage has been satisfied."

He said that this addition was desirable owing to the introduction of a clause in section twelve, providing for the restoration of the Taluqdár to his property if, within six months, the Chief Commissioner thought that the provisions of the Act should not continue to apply thereto. Thereupon all barred proceedings and debts would be revived; and it was only just that dispossessed mortgagees should be restored to their former position.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN asked leave to postpone his Motions regarding the Bill to amend the Penal Code.

Leave was granted.

COINAGE AND MINT BILL.

The Hon'ble MR. STEPHEN moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Coinage and the Mint be taken into consideration.

He said that this was emphatically a measure of consolidation. Its object was the improvement of the law, and not the settlement of any of the delicate questions which were connected with the state of the currency. On these questions the Bill committed the Government to nothing, and he (MR. STEPHEN) believed that the Government saw no immediate necessity for entering upon their consideration. He made this statement, because he had seen in the public papers statements which showed that the measure had been misunderstood, and that it was supposed to be something more than it really was, a part of the general scheme of consolidation to which he had so often referred. Had it been a financial or currency measure, it would have been introduced by his Hon'ble friend, Sir R. Temple, who was the proper person to deal with such subjects. Though, however, the measure was a juridical and not a financial one, it had the sanction and approval of the Financial Department, and the opportunity had been taken of making a few alterations in the law which the experience of that Department recommended. Still, with the exception of the clauses relating to the

destruction of light-weight, counterfeit, and called-in coin, the Bill was little but a re-arrangement, in twenty-eight sections, of the law now scattered through four Regulations and two Acts.

The changes made by the Select Committee might be shortly stated.

As money could only be made exact within a certain limit of error, the Committee had followed the example of the recent English Act (33 Vic., cap. 10), and introduced clauses providing that the 'remedy,' or permissible deviation from standard weight and fineness, for gold and silver coins, should be as follows:—

	Remedy in weight.	*Remedy in fineness.*
Gold Mohur.	$\frac{2}{1,000}$	... $\frac{2}{1,000}$
½ ditto.		
¼ ditto.		
Double ditto.		
Rupee.	$\frac{5}{1,000}$	... $\frac{2}{1,000}$
½ ditto.		
¼ ditto ...	$\frac{7}{1,000}$	... $\frac{3}{1,000}$
⅛ ditto ...	$\frac{10}{10,000}$	...

The remedy for all copper coins would be one-fortieth in weight.

In section nine the clauses relating to the receipt of mohurs and sovereigns in payment of Government demands had been omitted. This matter was, the Committee thought, better left to the Executive.

Part VII had been restricted to silver coin: the power to cut light-weight, counterfeit, and called-in coins was confined to such officers as Government would appoint in this behalf; and such power would be exercised subject to rules prescribed by the Government of India. Coins so cut which were counterfeit or had been reduced in weight otherwise than by reasonable wearing, would be returned. But genuine coins so cut, which had lost more than two per cent. in weight, or had been called in, would be received at the rate of one rupee per tola. These alterations rendered unnecessary the section regarding the decision of disputes by a Magistrate.

In Part VIII clauses had been introduced requiring the Mint Master to receive all bullion fit for coinage which might be brought to the Mint in

certain quantities, and imposing a charge for melting or cutting of one-fourth per mille on gold, and of one per mille on silver bullion.

Where bullion so brought was withdrawn, the Committee had provided that the withdrawal should be within twenty-four hours after receiving the Assay Master's report, and on payment of a fee prescribed by the Government of India.

Section nineteen, as to the additional duty for coining half and quarter rupees, had been struck out. It would, if enacted, have injured the poorer classes by preventing the free issue of small coin without extra charge.

The Committee had empowered the Governor General in Council to make rules as to the staff and management of the Mint, and also (by notification in the *Gazette*) to diminish the amount of remedy allowed, to call in coins, to prescribe rules for the guidance of officers authorised to cut or break coin, to establish mints at any places in British India other than Calcutta and Bombay, to abolish both or either of the mints at those towns, and to regulate any matters relating to coinage and the mint not provided for by the Bill.

Lastly, Bengal Regulation XIV of 1817 had been added to the schedule of repealed enactments.

The Hon'ble SIR R. TEMPLE desired to express, on behalf of the Financial Department, the obligation it was under to the Legislative Department for the care with which the present measure had been elaborated.

The Motion was put and agreed to.

CORONERS' BILL.

The Hon'ble MR. STEPHEN introduced the Bill to consolidate the laws relating to coroners, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that this Bill was also a measure of consolidation, and would, if enacted, put an end to the separate existence of five enactments.

The Motion was put and agreed to.

PRISONS' BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to amend the law relating to prisons in the Panjáb, Oudh, the Central Provinces, and British Burma.

PRISONERS' BILL.

The Hon'ble MR. COCKERELL asked leave to postpone his Motion for leave to introduce a Bill to consolidate and amend the law relating to prisoners.

Leave was granted.

LOCAL EXTENT BILL.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Strachey be added to the Select Committee on the Bill to declare and consolidate the law relating to the local extent of the general Regulations and Acts, and the local limits of the jurisdiction of the High Courts and chief controlling revenue authorities.

The Motion was put and agreed to.

MAULMAIN TIMBER DUTIES' BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to legalize the levy of duties on certain timber imported into Maulmain between July 1861 and August 1865. He said that duties on foreign timber imported into Maulmain by the Salween River, which flowed through the Tenasserim Division, had, since 1842, been levied at a place called Kado. Down to October 1861 these duties were supposed to be authorised by Act XXX of 1854, section seven, which provided that 'teak timber floated down any river in the Martaban *or Tenasserim* Divisions, should be charged with the same duty as that chargeable for the time being under section six on teak timber passing a river frontier custom-house,' *i. e.* (as appears from section six), a custom-house on either of the Rivers Irawádi and Sítang. But duties levied on timber passing down these two rivers were abolished by a notification in the Foreign Department made under Act IV of 1863, and dated the 4th June 1863. Thenceforward, therefore, the levy of duties on the Salween River was unauthorised. The change in the law as regards the Salween was, of course, unintentional, and had been, until quite recently, unknown both to the local authorities and the public. The present Bill was

intended to legalize the levy of these duties from the 1st July 1864 down to the 2nd August 1865, and to indemnify the officers concerned. For the duties levied before the former date the Limitation Act would provide, while those levied after 2nd August 1865 were legalized by Act VII of 1869.

The Motion was put and agreed to.

EVIDENCE BILL.

The Hon'ble MR. STEPHEN moved that the Hon'ble Mr. Strachey be added to the Select Committee on the Bill to define and amend the Law of Evidence. He said that the Motion afforded him an opportunity of saying a few words on a measure of the very highest importance. The Evidence Act was drafted by the Indian Law Commissioners, and sent out to this country two years ago. It was introduced by Mr. Maine, referred to a Committee, several of the members of which had now ceased to belong to the Council, and published in the *Gazette* for general information.

Objections of great weight had been taken to it by many of the most distinguished lawyers in India, and, no doubt, the subject was one which required the most careful handling. It was impossible to exaggerate the practical importance of the Bill, as it would regulate the most important part of the procedure of every court of justice throughout the Empire. Such a measure would, of course, require the most careful consideration in each of its parts, and it appeared to him (MR. STEPHEN) that the great question which the Committee would have to consider was, what was likely to be practically useful in the various courts, and, in particular, in the courts of the mofussil. The English Law of Evidence had been gradually constructed by the decisions of successive generations of Judges and by Acts of Parliament, and it assumed throughout that the court had the assistance of a highly-qualified bar, that the facts in dispute were decided by a jury, and that the Judge was to act as an umpire between two litigants, and not as an independent enquirer into facts. The result had been that the object of many of the rules of evidence was rather to bring the proceedings to a point than to aid enquiry into truth. It was not so much a guide to the Judge as a set of conditions imposed upon the parties. He (MR. STEPHEN) felt doubts whether such a system could be advantageously introduced into this country without great modifications.

At the same time it was necessary to take some steps. The law was in a state of great uncertainty. No one could say precisely how far the English

Law of Evidence did, and how far it did not, prevail in the mofussil, and the consequence was that the subject caused great difficulty and uncertainty. As a proof of this he (MR. STEPHEN) might observe that in Messrs. Cowell and Woodman's Indian Digest, which contained notes of cases decided in about eight years, the title 'Evidence' filled no less than twenty-three royal octavo pages in small print and double columns. There were probably from four to five hundred decisions noted upon the subject. This was the state of things for which the Committee would have, if possible, to provide a remedy. It was one which in justice to exceedingly hard-worked officials ought not to be permitted to continue.

The Motion was put and agreed to.

The following Select Committee was named:—on the Bill to consolidate the laws relating to Coroners, the Hon'ble Mr. Cockerell and the Mover.

The Council then adjourned to the 20th September 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA;
The 6th September 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 21 & 25 *Vic., cap.* 67.

The Council met at Simla on Tuesday, the 20th September 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

The Hon'ble JOHN STRACHEY.

The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.

The Hon'ble J. FITZJAMES STEPHEN, Q.C.

The Hon'ble B. H. ELLIS.

Major-General the Hon'ble H. W. NORMAN, C.B.

The Hon'ble F. R. COCKERELL.

MAULMAIN TIMBER DUTIES BILL.

The Hon'ble MR. STEPHEN introduced the Bill to legalize the levy of certain duties on foreign timber imported into Maulmain, and moved that it be referred to a Select Committee, with instructions to report in a week. The Bill was intended to correct a departmental error committed in 1863, and he had already fully described the measure.

TARIFF BILL.

The Hon'ble SIR R. TEMPLE moved for leave to introduce a Bill to consolidate the law relating to Customs' Duties. Various amendments in the present

tariff were desirable, and the opportunity would be taken to incorporate the law relating to the import duties on salt and opium.

Leave was granted.

PRISONERS' BILL.

The Hon'ble Mr. Cockerell moved for leave to introduce a Bill to consolidate the law relating to prisoners committed by Courts. This Bill formed part of the general scheme for consolidating the Acts and Regulations, which, commencing with the Administrator General's Act (XXIV of 1867), had since been steadily pursued, and was now being actively carried out. It provided for the re-enactment of the substantial provisions of Acts VII of 1837, XVI of 1840, VIII of 1863, II and XII of 1867, and part of Act XXIV of 1855 relating to convicts and prisoners under confinement by order of any Court.

Those enactments embraced the entire law regarding such prisoners and convicts, as distinguished from the law relating exclusively to the internal management and economy of prisons.

No amendments of the existing law were contemplated by the Bill beyond such as were incidental to the more concise expression and convenient arrangement of the matter to be re-enacted.

Leave was granted.

CATTLE TRESPASS BILL.

The Hon'ble Mr. Cockerell moved for leave to introduce a Bill to consolidate the law relating to cattle-trespass. This also was a purely consolidation measure.

The principle, as he understood it, on which the general scheme of consolidation was being carried out, was that it was to be applied to all enactments, of which there were more than two on the Statute-book relating to the same subject and in operation exclusively within the same local limits.

The law regarding cattle-trespass was contained in Act III of 1857 and its amending Acts V of 1860, and XXII of 1861.

It was now proposed to re-enact in a consolidated form, for facility of reference, and without any material amendment, the extant provisions of those three enactments.

Leave was granted.

The following Select Committee was named:—On the Bill to legalize the levy of duties on certain timber imported into Maulmain, the Hon'ble Mr. Cockerell and the Mover.

The Council then adjourned to Friday, the 23rd September 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA;
The 20th Sept. 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Simla on Friday, the 23rd September 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF.

The Hon'ble JOHN STRACHEY.

The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.

The Hon'ble J. FITZJAMES STEPHEN, Q.C.

The Hon'ble B. H. ELLIS.

Major-General the Hon'ble H. W. NORMAN, C.B.

The Hon'ble F. R. COCKERELL.

MAULMAIN TIMBER DUTIES BILL.

The Hon'ble MR. STEPHEN presented the Report of the Select Committee on the Bill to legalize the levy of certain duties on timber imported into Maulmain.

PAPER CURRENCY BILL.

The Hon'ble SIR R. TEMPLE moved for leave to introduce a Bill to consolidate the laws relating to Paper Currency. This was merely intended to consolidate the four Acts (XIX of 1861, I of 1866, XXX of 1867, and XV of 1870) in which the law on the subject was now contained.

CIVIL COURTS BILL.

The Hon'ble Mr. Cockerell moved for leave to introduce a Bill to consolidate the laws relating to the Civil Courts in Bengal. He said that the consolidation of the law relating to the Civil Courts subordinate to the High Courts in lower Bengal and the North-Western Provinces was only partially effected by Act XVI of 1868.

That Act dealt only with the Courts of Principal Sadr Amíns, Sadr Amíns and Munsifs, in fact with all the District Civil Courts, except the District Judge's Court which was left untouched.

The law regarding the chief District (or zila) Courts was spread over the unrepealed fragments of about six Bengal Regulations and a single Act (L of 1860).

The Bombay Presidency, the Panjáb, and the various other territorial divisions of the Non-Regulation Provinces subject to a distinct Local Government had each their separate 'Courts Act' embracing the entire law respecting the constitution and jurisdiction of the Civil Courts within such Presidency or Division; and it had been proposed in Committee to extend the provisions of the Madras "District Munsifs Bill" so as to include, and thus effect the consolidation of the law relating to, all the Civil Courts subordinate to the High Court in the Madras Presidency.

Hence for the sake of general uniformity, no less than for the further development of the scheme of consolidation of the Statutes, it had become necessary to gather together in one Act the now scattered fragments of the law regarding the constitution and jurisdiction of the Civil Courts in Bengal.

As it was well known that very considerable alterations in our present judicial system had been proposed and had undergone much discussion, it seemed fit that he should state here that whatever stage the various questions therein raised might have reached in the deliberation of the Government, they were as yet far from ripe for legislative action, and no such changes were included in the amendments contemplated by the Bill. Those amendments were for the most part of an unimportant character, and chiefly confined to the

rectification of omissions in Act XVI of 1868, touching the jurisdiction of subordinate Judges and Munsifs.

In short the aim and object of the Bill, which he asked leave to introduce, were simply to make the law regarding the Civil Courts in Bengal as compact as the law on this subject already was, or very shortly would be, in respect of all other parts of the Empire.

The Council then adjourned to Friday, the 30th September 1870.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA;
The 23rd Sept. 1870.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Friday, the 30th September 1870.

The Council adjourned to the 3rd October 1870.

SIMLA;
The 20*th September* 1870.

WHITLEY STOKES,
Secretary to the Govt. of India.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Simla on Monday, the 3rd October 1870.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*
His Excellency the COMMANDER-IN-CHIEF.
The Hon'ble JOHN STRACHEY.
The Hon'ble SIR RICHARD TEMPLE, K.C.S.I.
The Hon'ble J. FITZJAMES STEPHEN, Q.C.
The Hon'ble B. H. ELLIS.
Major-General the Hon'ble H. W. NORMAN, C.B.
The Hon'ble F. R. COCKERELL.

MAULMAIN TIMBER DUTIES BILL.

The Hon'ble MR. STEPHEN moved that the report of the Select Committee on the Bill to legalize certain duties on timber imported into Maulmain be

taken into consideration. The Committee had made no alteration in the Bill, and recommended that it should be passed.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN moved that the Bill be passed.

The Motion was put and agreed to.

CORONERS' BILL.

The Hon'ble MR. STEPHEN presented a preliminary report of the Select Committee on the Bill to consolidate the laws relating to Coroners.

PRISONS BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bill to amend the law relating to prisons in the Panjáb and the Provinces under the immediate administration of the Government of India be taken into consideration. He said, it would be seen that the effect of the proposed amendments was to reduce the enacting matter of the Bill by about one-third of its original dimensions.

The reports of the several officers, experienced in the administration of prisons within the territories to which the Bill applied, who had been consulted on the subject, indicated a general concurrence of opinion that the Bill, as introduced, erred mainly in its attempt to arrange matters of minute detail, which could be better regulated by rules framed from time to time by the Executive.

The original Bill was clearly obnoxious to the criticism that, whilst it aimed at completeness by going into such details as the definition of the minor duties of medical officers, gaolers, and the subordinate officers of prisons, and the regulation of the food, dress, and employment of criminal prisoners, it yet virtually recognized the impracticability of dealing exhaustively with such subjects by express enactment in its supplementary provision, under which the Local Government was empowered to make rules in relation to the same matters.

In the Provinces to which this Bill was not intended to apply, such details in the administration of prisons were provided for by rules made by the Local Governments. That system had been found to work well, and it had this obvious

advantage over the plan of the original Bill, that the regulations so constituted could be constantly varied as local circumstances might require, without the necessity of recourse to the intervention of the legislature. The Committee had therefore struck out the clauses relating to the matters above referred to, leaving them to be dealt with by the Local Governments under the general power of making rules conferred by section fifty-four of the amended Bill.

The other material amendments proposed were, in relation to the following subjects, taken in the order in which they occur in the Bill:—

(1) the appointment and removal of prison officers (section eight);

(2) the power of interference in the control of prison affairs vested in the Magistrate or chief Executive Officer of the District by section thirteen;

(3) prison offences (section forty-seven); and

(4) the powers of the Superintendent to punish offences against prison discipline.

The object of these amendments and the considerations by which they were suggested for adoption were so obvious as to call for but few remarks.

The power of appointment and removal of gaolers and the subordinate officers of prisons was, by sections seven and eight of the original Bill, vested in the Local Government. Such an arrangement was not only at variance with the existing practice in regard to such appointments and dismissals, but could not possibly work satisfactorily. The effect of the amendments proposed on this head was to maintain the present system.

As in some prisons the duties devolving on medical officers and gaolers might be more than it would be reasonable to expect a single person to perform in the manner contemplated by the Bill, provision had been made for the appointment, where necessary, of a deputy medical officer and deputy gaoler.

Formerly, most prisons were under the charge of the District Magistrate, who was directly responsible for their good government. The requirements of modern prison-administration, however, demanded a closer and more constant supervision than the other multifarious duties of a District Magistrate admitted of his exercising effectively. Hence the direct connection of the Magistrate or chief Executive Officer of the District with the management and control of the details of management of prisons had been gradually severed, and under

the present system such officer was very rarely Superintendent of the prison. In most cases, however, the chief Executive Officer did exercise a general extra-official control over the management of the prison, and it was considered desirable that this practice should be recognized and placed on a legal basis. The amended Bill consequently proposed to give this officer a *quasi*-concurrent authority in the general control of officers of prisons with the Inspector General of Prisons.

The enumeration of prison-offences under Chapter XI had been extended so as to include every known offence against prison discipline, and was believed now to be thoroughly exhaustive of that subject.

Perhaps the most important of the proposed amendments was the enlargement of the powers of the Superintendent of a prison in regard to the punishment of offences. Those powers under the original Bill were limited to the award of sentences of close confinement for very limited periods and the reduction of diet.

Every expert in prison-administration could testify that the person in whom the direct control of prisoners was vested, must have the power of inflicting corporal punishment. Without such power, the efficient maintenance of prison discipline was not to be looked for.

The authority of the controlling officer was likely to be greatly weakened unless corporal punishment—the only punishment of which the majority of prisoners had a wholesome fear—could be inflicted without a regular judicial enquiry and reference even to such comparatively remote authority as the Magistrate.

The Bill as amended consequently provided for the infliction of corporal punishment, and the award of solitary imprisonment upon a summary investigation by the Superintendent of offences against prison-discipline.

It also provided that, where the punishment of imprisonment was inflicted for any offence under the Act, such imprisonment should be 'rigorous.' This was considered equally necessary where the offender was an officer of the prison as in the case of prisoners.

Experience had shown that simple imprisonment had, as a punishment for offences by the subordinate officers of prisons, no deterrent effect. Presumably,

the familiarity with prison-life acquired by such persons led them to disregard the disgrace and irksome restraint upon their personal liberty which in the estimation of others imprisonment of any kind involved.

Lastly, it was proposed to extend the operation of the Act to the North-Western Provinces.

An objection to this proposition had been made by the Local Government of those Provinces, apparently on the sole ground that their present system of prison-administration worked well, and consequently no change was required.

That objection, if of weight, as regards the North-Western Provinces, would be equally so as regards the other Provinces to which this Bill was intended to apply; for the system of prison-management now in force in the latter did not differ materially from that of the North-Western Provinces.

But the answer to the objection in either case was that the only material change that would be effected by this Bill was the legalization of the present system of administration, which, as the law stood, had no legal basis whatever.

The existing law on the subject of prisons was contained in the several enactments enumerated in the first Schedule to the Bill. Those enactments were actually in force in the North-Western Provinces only; but the spirit of them (whatever that term might imply) was equally applicable to most of the Provinces affected by the Bill.

This law, whilst it defined certain offences against prison-discipline and prescribed penalties therefor, in no way legalized the rules framed by the Local Governments upon which the present administration of prisons was based. The only possible authority for such rules was in the provisions of Act XVIII of 1844, but those provisions rested on the supposition that the Magistrate or Joint Magistrate of a District, acting under the general supervision of the District Judge, was the centre of the system, and such, as MR. COCKERELL had remarked, was not the case.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that in section fifty-one, line two, after the word 'prison' the following words be inserted: "ill-treating the prisoners, or."

He said that complaints of ill-treatment of prisoners by the officers of the prison were, as was well known to all who had had experience of the management of prisons, of constant occurrence. The Bill as amended contained no provision for such cases. This omission, if not rectified, would probably render their reference—though they are generally of a very trivial nature—to some Magistrate necessary, and the form of a regular judicial enquiry would have to be gone through, entailing no small inconvenience and detriment to prison-discipline. He proposed, therefore, by inserting the words above-mentioned to make such cases primarily cognizable by the Superintendent of the prison.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL moved that the Bill as amended be passed.

The Motion was put and agreed to.

PRESIDENCY SMALL CAUSE COURTS GENERAL FUNDS BILL.

The Hon'ble SIR RICHARD TEMPLE moved for leave to introduce a Bill to transfer to the Government of India the General Funds of the Courts of Small Causes in the Presidency Towns. He said that the nineteenth section of Act No. IX of 1850 provided that the fees payable in each of the Courts of Small Causes at the Presidency Towns should be paid over to an Account, termed the General Fund of the Court. In point of fact, however, this provision had remained a dead letter, and indeed could hardly be carried out consistently with the now recognized financial principle which demanded that all public income should be credited to the general revenues of the State, while all charges were debited to the expenditure of the State. The fees in question had, ever since the establishment of these Courts, been credited to the State as "Judicial Receipts" or "Law and Justice," without any special authority for such procedure. It was obviously desirable to place the matter on a sound financial and legal footing, and to treat the receipts and charges of the Presidency Small Cause Courts in the same manner as the receipts and charges of other Courts were treated, that is, by crediting the fees to the general revenues of British India and meeting the expenditure from the same source. The Bill would, accordingly, repeal the last clause of section nineteen and provide that all fees heretofore paid over to, and now standing to the credit of, the General Funds of the Presidency Courts of Small Causes, should be paid to the Government of India for the general purposes of the State.

The Hon'ble MR. STEPHEN wished to remove a misapprehension which might, perhaps, arise as to the object of this Bill. It might seem objectionable

to take away from the suitors of the three Presidency Small Cause Courts Funds which the Legislature had intended to create for their benefit; but when we looked into the facts of the case, we should find that no injustice would be done. The Funds, if in existence, would belong to no one. Neither the Judges and the other Officers of the Courts, nor the suitors, nor any other assignable person, had any sort of claim upon them. They would represent merely the excess of the Small Cause Court fees over the Small Cause Court expenses, and would, as such, form a part of the public moneys as much as any other portion of the revenue. He (MR. STEPHEN) believed that the Government might from the first have made a rule under the Act that these Funds should be applied to the general purposes of the revenue, and there was, he thought, nothing unfair in doing retrospectively by an Act of the Legislature what might have been done prospectively by an Executive order, and what, in fact, had been done by the Executive without any order. It was impossible to mention any person, or any class of persons, who would be in any way injuriously affected by the passing of this Act.

The Hon'ble MR. ELLIS did not intend to oppose the introduction of the Bill, and would not have troubled the Council with any observations but for what had fallen from his hon'ble and learned colleague MR. STEPHEN. The Hon'ble Member had attempted to combat the objections which he thought it probable the public might take to the retrospective operation of the Bill. Now he (MR. ELLIS) must confess that he shared in the probable opinion of the public in this matter. He quite concurred with the Hon'ble Mover in the view that the principle of forming a special fund for Small Cause Courts was financially objectionable: there was no more reason for such a fund than there was for a special fund for the Court of a Munsif or a District Judge, and he thought it right that the existing law should be repealed, and the Small Cause Court General Funds abolished. But the law had not hitherto remained altogether a dead letter, as the Hon'ble Mover had asserted; for whenever additions to the establishments of a Small Cause Court had been desired, it had always been usual to show that there was a surplus of the special fund available to meet the charge, without trenching on the general revenues. The alteration of the law prospectively was a very different thing from the retrospective action proposed by the Bill, and he (MR. ELLIS) still retained the opinion which he had expressed when the projected Bill was under discussion in the Executive Council. He thought that it would have been far better had the Bill not proposed to sweep into the Treasury the surplus funds which had accrued under the law as at present existing, and in this opinion the public generally would, in all probability, concur.

The Hon'ble SIR RICHARD TEMPLE, in reply, said that the funds had never been formed; that to give effect retrospectively would mean the crediting to some unformed and non-existent fund the surplus, if any, of the fees after defrayal of charges, which again would necessitate the making out a separate account from the beginning for each Court—an operation which could not now be satisfactorily performed.

The Motion was put and agreed to.

PRISONERS BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate the law relating to prisoners not committed by a Court.

This, as before explained, was a purely consolidation measure.

Each part of the Bill contained the substance of a separate enactment, and the Bill, as a whole, comprised the entire law relating to prisoners confined by order of any Court, except that which regulated the internal management and economy of prisons.

Act XII of 1867, the substance of which appeared in the Bill as Part II, was designated the 'Presidency Jails Act;' but, unlike other prison Acts, it had no connection with the government of prisons, beyond providing for the appointment of a Superintendent. The object of that Act was to transfer to the Superintendent the legal authority for the detention and safe custody of prisoners which had theretofore been vested in the Sheriff.

CATTLE TRESPASS BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate the law relating to cattle-trespass. This also was a consolidation Bill. It provided for the re-enactment of the extant provisions of the three Acts which now contained the law in regard to cattle-trespass.

The only amendments contemplated by the Bill in its present shape were the provision that damages under section fourteen should be recovered as if they were fines, and the extension of the law in regard to injury done by pigs to private property to the case of a public road similarly damaged.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN moved that the Bill to amend the Penal Code be re-committed. He said that he had not in any degree changed the views he had expressed upon the main provisions of the Bill, in consequence of the criticisms which had been made upon them by the European and Native Press; but as the subject was an important one, and as certain amendments of detail appeared to be desirable, he made the present motion. He was determined to bring the matter forward at the earliest possible opportunity after the return of the Government to Calcutta, and on that occasion to state, in the fullest and most public manner, the reasons which led to the introduction of the Bill, and the objects which it was meant to effect.

The Motion was put and agreed to.

CRIMINAL TRIBES BILL.

The Hon'ble MR. STEPHEN moved for leave to introduce a Bill to provide for the registration of criminal tribes and eunuchs. He was glad to be able to say that as far as his experience had gone, he did not think that the natives of India were by any means a peculiarly criminal people. He thought that Bombay and Calcutta might, in this respect, compare by no means disadvantageously with Liverpool and Birmingham, and he was informed that many parts of the Mofussil produced far less crime in proportion to their population than parts of England. There were, however, certain parts of India, and in particular the North-Western Provinces, the Panjáb and Oudh, in which crime was carried on in a manner altogether dissimilar to anything which was known in Europe. In certain parts of the country there were tribes of criminals who carried on theft and robbery as regularly, as systematically, and with as little sense of criminality as if they were following the most legitimate pursuits. Accounts of these tribes had reached the Government from various quarters. He (MR. STEPHEN) would read a few selected passages from the papers before him; but, if necessary, he could increase the amount of evidence upon the subject to almost any required amount. The following description of the habits of these tribes was given by Major Nembhard, the Commissioner of East Berar—a District which did not form the home of these tribes, but was one of their principal places of resort for the purpose of plunder. After enumerating several tribes he proceeds:

"We all know that traders go by castes in India: a family of carpenters now will be a family of carpenters a century or five centuries hence, if they last so long, so will grain-dealers, blacksmiths, leather-makers, and every other known trade. A carpenter cannot drop his tools and become a *banya*, or a

lohár, or anything else. The only means of subsistence open to him other than the trade to which he is born is agriculture; but in ninety-nine cases out of a hundred, if he is born a carpenter, he will live and die a carpenter.

"If we only keep this in mind when we speak of 'professional criminals,' we shall then realize what the term really does mean. It means a tribe whose ancestors were criminals from time immemorial, who are themselves destined by the usages of caste to commit crime, and whose descendants will be offenders against the law, until the whole tribe is exterminated or accounted for in the manner of the thugs.

"Therefore, when a man tells you he is a Badhak, or a Kanjar, or a Sonoria, he tells you (what few Europeans ever thoroughly realize) that he is an offender against the law, has been so from the beginning, and will be so to the end; that reform is impossible, for it is his trade, his caste, I may almost say his religion, to commit crime."

This general description was fully borne out by other evidence; but a fuller notion of the character of these tribes might be obtained from a consideration of a very full account of one of them, it took, indeed, the shape of a regular history, which had been forwarded to Government by order of the Chief Commissioner of Oudh. This tribe was called the Burwar tribe, and its home was in the Gondah District. Its history began with a very significant and characteristic myth:

"More than four centuries ago, one of the tribes was ploughing a field close to a river. A woman who belonged to the family of a rich banker came to the river bank to bathe, and having taken off her necklace of pearls of great value, put it on the ground and went into the water. A kite or crow took the pearl necklace in its claws or beak and flew away. This jewel fell into the field which the Kurmí was ploughing. He took it up, was pleased with the prize, and went home and gave it to his wife. He then thought to himself that when a bird could take away such a valuable article, why should not he, who was a human being, betake himself to freebooting. After considering this matter deeply, he started on a journey, and in a short time obtained so great a wealth that all his forefathers could not have earned it by means of ploughing. Flushed with this success he spent the whole of the remainder of his life in predatory occupation, and laid the foundation of the Burwar clan. He proselytised a hundred men of his class, who after his death made further improvement in their

art of freebooting. But the rest of the clan who still adhered to their peaceful occupation of agriculture, excommunicated and even turned them out of their villages. The party was then small in number, and began to live a nomadic life in the groves of Putna, and subsisted on no other occupation than freebooting. As this kind of robbery, which is done openly and is termed Buryar, these men acquired the same appellation, which was afterwards corrupted into Burwar. About 250 years ago, being chased by the people and rulers of the day, these Burwars left the groves of Putna, and having separated into three gangs, one (from which the Sonoria tribe appear to have sprung up) proceeded towards Delhi; the other, who appear to be the same as the Ahírias and Udhs, went to Sítapúr and Hurdui, and the third to Buhrolí in Zila Gorakpúr."

The custom of these people, as of most of the other wandering tribes, was to live quietly for a considerable part of the year in their own District, and to spend the rest of it in wandering about the country to great distances plundering. They had a regular organization for the purpose, and their pursuits were carried on under the sanction of religion. Every Burwar child went through a sort of religious initiation on the twelfth day of his life, which was supposed to be essential to his success as a thief. When he grew up, he was a thief, as a matter, so to speak, of duty and necessity. "If a Burwar in his sound body and physical health, and without any sufficient cause, renounce his thieving profession, he is excommunicated from the brotherhood and excluded from participation in its spoils." The brotherhood, as he (MR. STEPHEN) had already observed, was a regular organization. The Burwars were divided into gangs of from 20 to 50 men each under a chief, called Sehwa. "All the household expenses of the family of a Burwar of the gang are supplied on emergency by its head. While the Sehwa remains at home, looking after the families of his gang, the gang goes out to remote places for thieving purposes, and whatever property it acquires in theft, it places entirely before the Sehwa, who divides the same," according to a fixed rule, "among his subordinates. None of the gang is allowed to withhold any portion of his property from the Sehwa, who is looked upon as absolute master of the whole." At the end of the rainy season the Sehwas consult astrologers as to the most auspicious time for starting on their journey. They perform ceremonies, attend to omens, and travel in all directions and for great distances upon their business of plundering. On their return their plunder is divided according to a fixed rule. They first set aside 3¾ per cent. for offerings to their gods; of the remainder 28 per cent. is divided between the thief and the Sehwa, and the remainder equally amongst the whole clan.

He (Mr. Stephen) had described the proceedings of these people somewhat minutely, because they might be taken as a specimen of the classes against which the proposed Bill would be directed. The Burwars, however, were by no means the most important or dangerous of the criminal tribes. After all they were only petty thieves; but others, as, for instance, the Mínas of Gurgaon, were robbers and dacoits, capable of the commission of the most desperate concerted crimes. Others, as was the case with several of the Panjáb tribes, were habitual cattle-stealers. Mr. Mayne, the Commissioner of Allahabad, and formerly the head of the Police of the North-Western Provinces, had given a list of no less than twenty-nine tribes who lived in the North-Western Provinces and carried on criminal pursuits of various kinds. The proceedings, however, of each of these tribes had this leading point in common; they had during part of the year a fixed residence, and during other parts of it they wandered about for criminal purposes.

This fact suggested the remedy which had, in fact, been tried in the Panjáb with respect to these tribes, and which it was now proposed to establish by law in that Province, in the North-Western Provinces (where somewhat similar experiments have been tried), and in Oudh. The remedy was to put the tribes under supervision in such a manner as to confine them to their homes, or, at all events, to provide the means of giving notice to persons likely to be injured by their depredations. The supervision consisted in forming a register of the members of the tribes, compelling them to reside within certain local limits, forbidding them to leave those limits without permission, and authorizing their apprehension if they should be discovered beyond them, and their transmission to the place where they ought to live. This last provision is the only one in the Bill which would be made applicable to the whole of India. The provisions as to registration would apply to those Provinces only which had been ascertained to form the place of residence of the tribes in question.

This system was in force, and, as the Government are informed, with very good results, for about twelve years in the Panjáb; but, at the end of that time, the question of the legality of the Executive rules upon which it was based was brought before the Chief Court, and they decided that the rules were illegal. The result of this naturally was to put an end to the whole system, and this, in its turn, is stated by the Government to have produced very bad results. In a memorandum on the subject Sir Donald McLeod made the following remark:—

"The existing law is wholly insufficient, and I do not think that any one who has had much experience in the detection and prevention of organized crime

will attempt to assert that it supplies all that is urgently required, while the remonstrances which have poured in upon the Panjáb Government from Police, Deputy Commissioners, and Commissioners, and even from Tahsíldárs and other members of the Native community since the ruling of the Chief Court in regard to the surveillance of criminal classes was issued, sufficiently attest the difficulties which have resulted from this course."

This led him (MR. STEPHEN) to speak of the objections which had been made to the rules proposed to be enacted. They might be resolved into two: one objection was that they would lead to oppression by the police, and another that they constituted an interference with the liberty of the tribes in question, and that the ordinary criminal law, which made it an offence to belong to a criminal tribe, and which enabled Magistrates to take security for good behaviour from habitual offenders and persons of known bad character, was sufficient for all purposes.

With regard to the question of Police oppression, he (MR. STEPHEN) fully admitted that the danger did exist. He thought, however, that it might be guarded against and reduced to a minimum, and he believed that if the Magistrates worked the Act carefully, this might easily be done. That annoyance and interference would be experienced by the tribes subjected to the operation of the Act was probable, but that could not be helped. When it came to a question whether the criminals were to be annoyed by the police, or the public annoyed by the criminals, he (MR. STEPHEN) would prefer the first branch of the alternative.

As to the second objection, he had always observed that English lawyers and law-courts had a most exaggerated estimate of the power of the ordinary criminal law to cope with organized crime. To suppose that the ordinary processes of law would ever put down crime was like supposing that sportsmen would exterminate game. The very utmost that the ordinary course of criminal justice ever had done, or ever would do, was to impose a certain amount of check upon crime, to keep it down to a certain level. A man proposing to commit a crime knew that he ran a risk of punishment, and this no doubt was a motive to a certain extent for not committing it; but all experience showed that the motive was not progressive. Ordinary criminal law did not put an end, or tend to put an end, to crime; it dammed or embanked the stream, but it neither diverted or drained it. When criminals formed, as in the case in hand, an organized class, a sort of body corporate, it was a fortunate circumstance for

society, for it rendered them far easier to deal with than if they acted individually. It was possible to attack and break up the organization, and when that was done there was reason to hope that the individuals would not continue the crimes which they learned from it and carried out by its means.

This naturally suggested the question of reform,—a question which had been raised by the High Court of Allahabad in a paper very lately received. This paper admitted that the legislation on the subject was necessary, but suggested that its object should be to encourage the Local Governments to settle the tribes in question upon waste lands or elsewhere, where they might be gradually accustomed to a course of honest industry. He (MR. STEPHEN) thought that such a course might, in many cases, be highly beneficial, but he did not see what legislation was required for the purpose. The course he apprehended might be somewhat as follows:—The Local Government might inform a criminal tribe of their intention to put them under the regulations imposed by the Act. The tribe might then very reasonably enough say,—"give us then the opportunity of living as honest men," and if the Local Government were able to make a grant of waste lands, and subject the tribe settled on them to rules passed under the Act, the arrangement would no doubt be an excellent one. The Bill, as framed, would enable the Government to make such rules. No Bill was required to enable them to grant lands.

There was one important omission in the Bill on which he (MR. STEPHEN) would say a few words in order that it might not be supposed to have been made through ignorance. No provision was made for the case of wandering tribes who had no fixed place of residence during any part of the year. There were many of these tribes grain-sellers, mat-makers, and others who led a vagrant life, and who, it was said, were much addicted to crime. There was, however, this difference between them and the tribes at which the Bill was levelled. The wandering tribes had, for the most part, honest occupations which were by no means a mere pretence, and which made it necessary for them to wander. Many of the grain-sellers, for instance, were exceedingly useful members of society, and though others frequently committed crimes, they did not make a regular profession of it under the rules of a regular organization like those of the Burwars or the Mínas. Without stronger facts than were at present before the Government upon the subject, it would hardly, MR. STEPHEN thought, be justifiable to subject such tribes to a passport system. If, however, any real necessity for such a step could be shown to exist, it would probably not be difficult to provide the legislative measures necessary to carry it out.

MR. STEPHEN now came to the second part of the proposed Bill which was directed against eunuchs. The subject was so disgusting that he felt the greatest reluctance in approaching it at all, and nothing but an imperative sense of duty could have induced him to refer to so loathsome a subject. The matter to which he was about to refer had been known to the Government of India for many years, as appeared from various papers on official record; but successive Governments had not seen their way to legislation, partly, perhaps, because more freedom of action was formerly entrusted to the Executive than was consistent with our present views, partly because doubts were entertained as to the proper course to take, and, perhaps, to a certain extent, because of the extremely disgusting and filthy nature of the subject. Whatever might have been the cause of the delay which had taken place, MR. STEPHEN was of opinion that it ought now to terminate. The eunuchs of the North-Western Provinces were as great a disgrace to human nature and to every Government which permitted their infamous association to exist as thuggee, infanticide, suttee, or any other abomination of the same sort. In plain words, it was officially proved that there existed in the Provinces in question an organized association of eunuchs who carried on a system of unnatural prostitution. They perpetuated their class by kidnapping and castrating boys whom they either bought from the kidnappers or stole themselves. The boys were used for the purposes of their trade. The men solicited employment by public exhibitions of singing and dancing often dressed as women. These facts had been proved on many occasions from 1852 (to go no further back) down to the present time. In some cases, men had been tried and convicted for kidnapping, mutilation, and other specific offences under the Penal Code, and had been punished with the severity which their crimes deserved; but the system still continued, and MR. STEPHEN was convinced that it would continue till a direct attack was made upon the organization itself, apart from the punishment which would, of course, continue to be awarded to the abominable crimes in which its character was occasionally displayed. It was unnecessary to shock the Council by going into details. They were printed in horrible abundance in the proceedings of the North-Western Provinces Government, and the depositions of the children who had been kidnapped and mutilated were, perhaps, as frightful stories as were ever told in the world. One circumstance specially deserved notice: these wretches had a sort of king or head man, and formed a community having considerable property. The then Inspector General of Police wrote in 1866,—"These creatures live under a government of their own; they have a king (Dilsukh Raí is his name, and he is, or was, resident in Delhi), and in these Provinces Náibs or Deputy Governors at Farakhabad, Mainpúri, Jaloun, certainly, and it is believed also at Amba in the Bareilly District, and at Jounpúr.

Under the Naibs are Gurus who are the Surgeons of the class, and their assistants who were also guardians or keepers of the boys after emasculation and until sold or apprenticed for most infamous purposes." In some instances, persons joined this association voluntarily and with a view to participation in its property.

Such were the facts with which the Government had to deal, and MR. STEPHEN was of opinion that the evil was one which ought to be crushed at all hazards, and no matter who objected to the process. He did not, however, believe that any considerable section of Native society, when they knew these facts, would regret or restrict the interference of Government. He thought, on the contrary, that the vast majority of the people would feel that the existence of an organized class of kidnappers and mutilators of children for such purposes as these was an affront and injury to every honest man in the country.

What, then, were the measures which Government proposed? They were that a register should be formed of all such eunuchs as there was ground to suspect of any connection with proceedings of this sort. Such registers had, in fact, been formed in many Districts, as the facts were notorious, but at present the Government had no legal power to form them, and no legal consequences followed from a man being registered. The task, of course, was one of delicacy and difficulty, and it could be discharged only by the aid of local knowledge and experience. This the Local Governments and District Officers would, no doubt, be able to supply. The course taken would be as follows:—The Local Government would be empowered and directed to form registers of such classes of eunuchs as they thought ought to be registered with a view to the suppression of the system described. It would become their duty to take care that no persons came upon the register to whom the Act was not intended to apply. Domestic servants, for instance, in Muhammadan families of rank would not be registered, and probably other classes might be exempted. When, however, an eunuch was placed on the register, he would be put under very stringent disabilities. He might be required to register his property, and would be incapacitated from disposing of it by will or otherwise, so that none of his associates would get any share of it at his death. He would be prevented from travelling without permission as a member of a criminal tribe. He would be made liable to heavy penalties if he had in his house, or in any way under his orders or control, any boy under sixteen years of age. He would be forced to account for any castrated boy under that age who might be found under his control or care, and would be presumed to have obtained possession of such boy for an unlawful and immoral purpose unless he could prove the contrary. Lastly, all eunuchs would be absolutely

forbidden to appear in public in women's clothes, or to dance for hire or otherwise either in the public streets or in private houses. Stringent as such measures might be, he (MR. STEPHEN) believed that nothing less would break up the infamous association to which he had described.

The Motion was put and agreed to.

The Council then adjourned *sine die.*

SIMLA;
The 3rd October 1870.

WHITLEY STOKES,
Secretary to the Govt. of India.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

— - — —

The Council met at Government House on Friday, the 11th November 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Honour the Lieutenant Governor of Bengal.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble D. Cowie.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

PRISONERS' BILL.

The Hon'ble MR. COCKERELL moved that the Bill to consolidate the law relating to Prisoners committed by a Court be referred to a Select Committee with instructions to report in a month. He said that the nature and object of the legislation of which this Bill formed a part, had been so frequently dwelt upon by his hon'ble and learned friend who had especial charge of the Legislative Department (Mr. Stephen) that it was unnecessary for him to advert to them here. The great advantage to be derived from a complete consolidation of the statutes must be universally acknowledged; and the substitution of one Act for seven could hardly be ranked amongst the measures obnoxious to the charge of over-legislation.

The adoption of such amendments of the existing law as were shewn to be required was of course an important element in the work of consolidation.

As regards the present Bill, the proposed alterations were confined to improvements in wording and arrangement.

The seven Parts of the Bill contained the substance of seven out of the nine enactments cited in the schedule; the provisions of the other two were enacted for a temporary purpose and were now obsolete.

The enactments so consolidated, embraced so much of the entire law (except the recently passed Prisons' Act) relating to prisoners as could not be affected by the action of the local Legislatures.

The Motion was put and agreed to.

CATTLE TRESPASS BILL.

The Hon'ble MR. COCKERELL also moved that the Bill to consolidate the law relating to Cattle Trespass be referred to a Select Committee with instructions to report in a month. He said that this also was a consolidation measure, incorporating with the original Cattle Trespass Act (III of 1857), the substance of the subsequent amending enactments.

When introducing the Bill, he (MR. COCKERELL) explained the grounds of the then proposed alterations. Since the Bill had been drawn, it had been brought to notice that the restriction contained in section 13, in regard to the appropriation of surplus funds accruing from fines and other receipts, worked inconveniently, and that it was desirable to extend the area of the objects on which such funds might be expended.

It had also been suggested that the provisions of section 15 should be enlarged so as to strengthen the hands of the officers employed in the conservation of forests, in the prevention of injury caused by the trespass of cattle.

The Motion was put and agreed to.

BENGAL REGULATIONS REPEAL BILL.

The Hon'ble MR. COCKERELL then moved that the Hon'ble Messrs. Strachey and Chapman be added to the Select Committee on the Bill to repeal certain obsolete Regulations of the Bengal Code.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to consolidate the law relating to Prisoners committed by a Court——The Hon'ble Messrs. Stephen and Chapman and the mover.

On the Bill to consolidate the law relating to Cattle Trespass ——The Hon'ble Messrs. Stephen and Chapman and the mover.

The Council adjourned to Friday, the 18th November 1870.

CALCUTTA,
The 11th November 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

Office Supdt. Govt. Printing.—No. 4405, L. C.—14-11-70.—200

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th November 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major General the Hon'ble H. W. Norman, C. B.

The Hon'ble D. Cowie.

The Hon'ble Francis Steuart Chapman.

The Hon'ble F. R. Cockerell.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN presented the final report of the Select Committee on the Bill to amend the Indian Penal Code. This Bill had been much discussed. He hoped to explain at a very early opportunity the policy of the Government in respect to it.

LIMITATION OF SUITS BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to consolidate and amend the law relating to the limitation of suits, said that this Bill was one with regard to which it would be improper to occupy the attention of the Council at any length, inasmuch as it was a Bill of a most technical character, although he hoped it would prove to be one of great utility. The present law regarding the limitation of suits, as contained in Act XIV of 1859, contained twenty-four sections, and he was very sorry to say that those twenty-four sections had given rise to nearly 1,100 decisions, so that the law had got into a state which could be easily imagined by those accustomed to reading law-books, and which it would be difficult to describe to others.

It was enough to say that since the Act came into force, there had been more than 125 decisions a year upon it. These decisions had been collected with great care, and discriminated with much learning and intelligence, by

Mr. Ninian Thomson, a Judge of the Small Cause Court of Calcutta, in a work which he had lately published on the subject. The work was creditable to Mr. Thomson, but the necessity for it was discreditable to the law. MR. STEPHEN thought it was the duty of the legislature, as soon as it could, to reduce this enormous mass of decisions to a certain number of plain enactments. The general principle on which statutes of limitation were framed was plain and notorious. The practical difficulty of framing them lay in the circumstance that it had been customary to provide that actions should be brought within a certain time "after the cause of action arose." To say when the cause of action arose in particular cases was often very difficult. The Bill proposed to deal with the difficulty by setting forth in a schedule every sort of suit, and stating specifically, in the case of each suit, the precise moment at which the period of limitation began to run. The schedule thus prepared contained 157 different items, and was furnished with a copious index, which would enable anybody to find with ease the law relating to the suit in which he was interested. That was the great feature of the Bill.

Besides that feature, there was another of considerable importance in point of simplification. The Bill repealed different portions of no less than 25 enactments. He need not say much about the substance of the provisions of the Bill itself: they did not greatly alter the substantive law, except in introducing provisions which would enable persons to acquire a title by prescription. This would alter rather the theory than the practice of the law. The schedule was long, but he believed it would be found to embody the substance of the whole of that enormous mass of decisions in which the present law was contained, and that it would very much abridge and simplify the existing law.

The Motion was put and agreed to.

INDIAN REGISTRATION BILL.

The Hon'ble MR. COCKERELL asked leave to postpone his motion to introduce the Bill for the Registration of Assurances.

Leave was granted.

CIVIL COURTS (BENGAL) BILL.

The Hon'ble MR. COCKERELL introduced the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in Bengal, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Bill had been published in the *Gazette of India*

under Rule 19. It purported to consolidate the law relating to the constitution and jurisdiction of all the Civil Courts (except the Small Cause Courts) subordinate to the High Courts in Lower Bengal and the North-Western Provinces.

There was, he thought, no part of the Statutes which stood in greater need of consolidation than that which related to the subject of this Bill, for the course of legislation had brought the law regarding the Bengal Courts into such a disjointed state that it was no easy matter at the present time to ascertain the precise legal jurisdiction and functions of a District Judge.

The original legislation on this subject, contained in the Regulations of 1793, and the corresponding Regulations of 1795, 1803 and 1805, which virtually extended the provisions of the former Regulation to Benares and the territories which were then known as the Ceded and Conquered Provinces, combined directions as to the application of substantive law and rules of procedure, and applied only to the Zila or District Courts.

The Courts of Munsifs and Sadr Amíns were first established on their present footing by Regulation XXIII of 1814, and those of Principal Sadr Amíns by Regulation V of 1831. These Regulations specifically prescribed certain rules of procedure for the above Courts, and in general terms extended to them the provisions of the older enactments, which regulated the application of substantive law in the adjudication of litigated matters by the Zila Courts.

The Civil Procedure Code superseded the rules of procedure prescribed by the Regulations, and it thereafter became necessary to set aside the latter by express repeal; but, as in the manner just described, rules as to the application of substantive law and of procedure had become so interwoven, especially as regards the inferior Civil Courts, that the repealing process was inadvertently carried too far, and operative rules were extinguished in conjunction with those which had become obsolete.

Thus it happened that, although nearly all litigation was, at least in its primary stages, carried on in the Civil Courts subordinate to the District Courts, the former were not under any law at present in force bound by the very important rule contained in section 18 of the Bill.

The provision of section 17 also was, in the present state of the law, legally applicable only to the Zila or District Courts.

Section 19 contained a new and useful provision, taken from the law in force in the Madras Presidency.

In Part V (section 28) there was a new provision for dealing with charges of grave misconduct on the part of Munsifs. As those officers were removable from office without the sanction of the Government, Act XXXVII of 1850 would not *per se* be directly applicable to such cases.

The existing law on the subject of Part VI was, as regards the District Courts, held to leave the extent of the power conferred on those Courts for the removal of their ministerial subordinates open to some doubt. The High Court claimed to have. and did in fact, he believed, exercise, a power of interference in such cases.

As the Bill now stood this power was disallowed, and it would be a question for the consideration of the Select Committee to which this Bill might be referred, whether the reservation to the superior Court of a power of interference was expedient.

If the High Court was to have the power of removing the ministerial officers of the District Courts from one District Court to another, he thought it should only be exercised at the instance of a District Judge.

It seemed to be essential to the maintenance of a proper control over his office establishment, and the consequent efficient conduct of the routine business both of the District and Subordinate Courts, that the authority of the Judge for the punishment of misconduct on the part of his ministerial officers should not be impaired by the existence of a power of interference *proprio motu* vested in a remotely located superior Court; and it would surely be contrary to sound policy to fetter the discretion of so high a functionary as the Judge of a District Court in the government of his office establishment, for whose efficiency he was solely responsible.

In other respects the Bill attempted no more than the reproduction of the substance of the existing law in more concise language, and with a clearer and more intelligible arrangement of its subject-matter.

The Motion was put and agreed to.

INSOLVENCY BILL.

The Hon'ble Mr. Stephen introduced the Bill to amend the Law of Insolvency, and moved that it be referred to a Select Committee with instructions to report in two months. He said that since he had moved for leave to introduce this Bill, it had been printed and published for public information. He had stated on a former occasion what the principles of the Bill were, and

pointed out the manner in which it had been framed on the English law lately passed. The Bill was published while the Council was at Simla, in order to afford to the mercantile community, and especially to the mercantile Members of the Council, the opportunity of forming an opinion on the subject. It would be considered during the winter; but he (MR. STEPHEN) might observe, with reference to a remark he had seen made, that it was a mistake to infer, from the first of January next having been fixed as the date for the commencement of the Act, that there would be any particular hurry about passing the Bill. Such dates were always inserted subject to alteration.

In the mean time he hoped to receive the opinions of the mercantile community, and especially the opinions of the three Chambers of Commerce, on the provisions of the Bill. It had been already approved by the Official Assignee at Calcutta, who had made some valuable observations as to the mode by which frauds might be prevented; and MR. STEPHEN hoped that, before the end of the session, the Bill would be passed into law.

The Motion was put and agreed to.

EVIDENCE AND CORONERS' BILLS.

The Hon'ble MR. STEPHEN also moved that the Hon'ble Mr. Chapman be added to the Select Committees on the Bills to define and amend the Law of Evidence, and to consolidate the laws relating to Coroners.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to consolidate and amend the Law relating to the District and Subordinate Civil Courts in Bengal——The Hon'ble Messrs. Stephen and Chapman and the mover.

On the Bill to amend the Law of Insolvency——The Hon'ble Messrs. Cowie, Chapman, Bullen Smith and Cockerell and the mover.

The Council adjourned to Friday, the 25th November 1870.

CALCUTTA,
The 18*th November* 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

Office Supdt. Govt. Printing.—No. 4676, I. C.—23-11-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 25th November 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble D. Cowie.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

PENAL CODE AMENDMENT BILL.

The Hon'ble MR. STEPHEN moved that the final report of the Select Committee on the Bill to amend the Indian Penal Code be taken into consideration. He said that this Bill had excited, as they were all aware, very considerable discussion; and he proposed to fulfil his promise to enter into a full explanation of the policy of the Government in respect to the measure. He did, in fact, explain briefly the objects of the Bill, when it was introduced into the Council. But the subject appeared to require some further explanation, which he would now proceed to give. Complaints had been made that the Bill was to be passed hurriedly through the Council and at a distance from the centres of public opinion and discussion. As the fact was that there was really no hurry in proceeding with the Bill, he had proposed that its passing should be deferred, and it had now been more than three months before the public. He did not know that any part of the Bill had attracted the particular attention of the community, with the exception of section five, which referred to the offence of exciting disaffection. He should therefore confine what he had to say to that particular section, but he would first take the opportunity of making one remark on the section immediately preceding it. This section rendered the offence of conspiring to deprive the Queen of the sovereignty of British India

or to overawe the Government punishable with transportation for life or for any shorter term, or with imprisonment which might extend to ten years. He had to observe, with regard to that section, that the Committee had thought it right to make the offence of conspiring by criminal force or by the show of criminal force more severely penal than the offence of actually taking part in an unlawful assembly, having for its object the overawing of the Government. The reason was this, that persons who, by conspiring together to bring about such a result, set the whole matter in motion, seemed more criminal and far more deserving of punishment than those who were their mere tools and only took part in such an assembly.

He would now pass to the explanation of the fifth section, which related to the exciting of disaffection. He thought that section had been very severely criticized, or rather it had been severely blamed, for of really intelligent criticism there had been far less than he should have been glad to see. He proposed to state generally the purpose of the section, and how it effected that purpose. The object of the section was this. In connection with the preceding section it embodied, and, he hoped, improved and condensed, the existing English law on the subject to which it related. It might be said of the Indian Penal Code in general, that it was the English Criminal Law freed from the defects which from a variety of causes had affected it. By some means or other the Penal Code as it stood had entirely omitted that branch of the English Criminal Law which consisted of the Treason-Felony Act and the law relating to seditious words and libels. It contained no section by which you could punish conspiracies to wage war against the Queen or deprive her of the sovereignty of British India, unless the conspiracy proceeded so far as to be followed by open acts or actual preparations for rebellion. But besides this, the Code contained no provision whatever with respect to exciting disaffection by speaking or writing, and that, he said, although the contrary had been asserted, was a great defect, and one which ought not to be permitted to exist in any rational system of criminal law whatever. The only means by which offences of that kind could be punished under the Penal Code was by treating them as cases of abetment. It might be said that, if the speaking or writing went the length of advising persons to wage war against the Queen, it was abetment, and those who instigated the commission of the crime were abettors. In some cases it might be so; but in the vast majority of cases he had no doubt it would be otherwise: for the crime of rebellion, speaking broadly, was not a crime committed, like theft, murder, or house-breaking, by one single act, done at one single moment, and proceeding from some one motive. It was, on the contrary, the result of

a great variety of feelings excited in various ways, and therefore, if rebellion itself was to be regarded as a crime (and it was needless to argue with those who thought it was not), it was necessary to punish acts which led or were intended to lead to it, even if they did not fall within those narrow limits within which abetment was comprised in common cases. It was necessary to have a wider definition of abetment in the case of rebellion than in the case, say, of murder or theft, because the causes which produced rebellion were wide, and the acts were numerous and were spread over a large space of time. It was on these grounds that he said there was a serious defect in the absence from the Penal Code of all provision for the punishment of offences of this kind.

He now came to the question, whence did this defect arise? When he addressed the Council on a former occasion, and also in the Statement of Objects and Reasons which was before the public, he said that the defect arose from oversight on the part of those who passed the Code. It might be that he ought to have produced at greater length the evidence on which he made that assertion. But he must confess that he felt somewhat aggrieved by the manner in which his assertion had been treated. That the Bill itself should be objected to was natural; that the clauses of the Bill should be the subject of criticism was just what he wished; but when a public man in this country committed himself to a definite statement, the least you could do was to contradict him; this had not been done in the present case. His deliberate statement had been passed over without the slightest notice, and its probability had been discussed upon abstract grounds, as if the fact that he had made it was of no importance whatever. He knew there was a disposition in this country to treat oral evidence with considerable indifference, but he thought an exception should be made in favour of a distinct assertion made by a member of the Government upon a matter regarding which he must be fully informed. It so happened that he had before him information which would convince the public that the assertion was true. It was a letter written so far back as the 7th June 1869 by Sir Barnes Peacock to Mr. Maine, and he would observe, in reference to that date, that, when the late unfounded rumour of disturbances at Allahabad reached England, an English newspaper, *The Spectator*, which was peculiarly well informed on Indian matters, observed, with reference to this Act, that he (MR. STEPHEN) had hastily drawn a Bill for the suppression of seditious language. It appeared from the letter in question that the Bill was under consideration in June 1869, and it was one of the earliest measures to which his attention was directed on his arrival in this country in December last. It had absolutely no connection whatever with the occurrences of the past summer and spring.

The letter of Sir Barnes Peacock to which MR. STEPHEN had referred was as follows. Sir Barnes Peacock said:—

"I have looked to my notes, and I think the omission of a section in lieu of section 113 of the original Penal Code must have occurred through mistake, though I have no distinct recollection of the subject. After the original Code had been carefully revised, the original Code and the revised Code were printed in double columns. I send herewith a copy of the section proposed in the revised Code to be substituted for section 113.

"We had many discussions as to section 113, and I recollect that I thought that the words 'attempts to excite feelings of disaffection to the Government,' &c., were objectionable, and were not much less vague and undefined than the charge in one of the counts in *Reg.* v. *O'Connell,* of 'conspiring to bring into hatred and contempt the tribunals of the country,' as to which, see the arguments in 11 Clarke & Finnelly 195. After the revised Code had been printed, I find that I proposed to amend the section to be substituted for section 113. I send you a copy of my proposed section, as it would have stood if the section in the revised Code had been amended.

"At the foot of that section I wrote 'explanation in margin as amended, *stet,*' that explanation being the explanation as it originally stood to section 113, substituting the words 'within the last clause,' for the word 'disaffection' in the original explanation.

"This leads me to think that, at that time, the clause substituted in the revised Code for section 113 must have been intended to stand, either as originally prepared, or as I proposed to alter it.

"I am strengthened in this view by finding that I have written, against the section in the revised Code as I proposed to alter it, 'see new section as taken down by Mr. Morgan' (who was then Clerk to the Legislative Council).

"Looking at this note I feel almost confident that, upon my proposing to amend the substituted section in the revised Code, the Committee, after discussion, must have agreed upon a section to be substituted, and that it was taken down by the Clerk of the Council, and afterwards omitted by some mistake or oversight. I have also got a memorandum 'of publishing false news or reports to induce persons to mutiny or rebel—see Begum's Proclamation,' as a matter for consideration whether the section in the revised Code would meet such a case. I think when you consider section 113 and the explanation, you will find that the explanation very much narrows the definition, and that it will be better to define the offence more accurately than is done by section 113. You will find a good deal upon section 113 in the Second Report of the Indian Law Commissioners on the Indian Penal Code, published in 1847.

"You will also find that Mr. Bethune proposed to substitute, for section 113, two sections, 131 and 132 of his revised Code, upon which Sir Lawrence Peel expressed his views in a letter to the Government of India, dated September 11th, 1851.

"As the report of the Indian Law Commissioners and the letter of Sir Lawrence Peel (with which Sir Arthur Buller concurred generally) may not be at Simla, I have had copies

made for you, which I send herewith. Sections 131, 132 of Mr. Bethune's revised Code are set out in Sir Lawrence Peel's remarks. You will bear in mind that 'banishment' is not one of the punishments included in the Penal Code.

"There may possibly be some memorandum in the Legislative Council Office, which may show the precise terms of the section taken down by Mr. Morgan. I am sorry that I cannot throw any further light upon the matter, as I have no note as to the adoption or rejection of that clause. I feel, however, that it was an oversight on the part of the Committee not to substitute some section for section 113"

That, he (MR. STEPHEN) thought, was as strong evidence as it was possible to obtain at the present time for the assertion made by him. He had sent Sir B. Peacock's letter to Sir Walter Morgan, now Chief Justice of the High Court of the North-Western Provinces. Sir Walter said that he had preserved no notes of what took place at the meetings of the Select Committee, and had no recollection of the subject. MR. STEPHEN therefore repeated the statement which he originally made, that there was a section to the present effect, which ought to have been submitted to the Council, and to have been passed, and that it was omitted through a mistake or oversight which it was difficult now to account for. He had referred to the debates which took place in the Council, but there was no reference in those debates to any such provision. The result seemed to him to be clear, that when the Bill was finally passed through the Committee, a section equivalent to the present section was omitted by some mistake. Be that how it might, he proposed to proceed with the subject.

In an event of this kind, what was the duty of the Government? He said that it was to repair the omission, whoever might have been to blame for it. Various objections had been taken to this course. One was that the country was now in so loyal and peaceable a state, and that all things were going on so pleasantly, that no such measure was required. He would answer that that appeared to be the very reason why we should repair the omission, which, upon that view of the case, could not give offence to anybody. Certainly, if no one had the slightest intention of exciting disaffection, no one would have any objection to punish those who at any future time might excite, or be disposed to excite, such disaffection. He must confess that objections of this kind never weighed with him. Any time was good for stopping a gap: stop it as soon as you find it out—in a quiet time if possible, and in troubled times if you must. If you had the opportunity of rectifying mistakes of this nature in a quiet time, it was surely better to do it when the matter could be quietly discussed, than to wait to do it till agitating and exciting circumstances suggested a measure of exceptional severity.

He now had to consider the exceptions taken to the clause. Sir Barnes Peacock had appended to his letter the section as he drew it, and which was proposed to be substituted for one which appeared in the original draft of the Code. A great deal of discussion had taken place on the section now proposed, and after that discussion the Commissioners by whom the Code was drawn adhered to their draft, assigning their reasons, and they had answered the objections, as he (MR. STEPHEN) thought, in a very satisfactory manner. Sir Barnes Peacock's proposed section was in its turn anxiously considered by the Committee whose final report the Council was now considering. The Committee, with all respect to Sir Barnes Peacock, came to the conclusion that it was not an improvement on the original draft of the Commissioners. For one thing, it was very much more severe: the section was as follows :—

"Whoever attempts to excite or to induce, or does anything which he knows to be likely to excite or to induce, the people, or any class or portion of the people, who live under the Government of India, to entertain such feelings of disaffection to that Government or to any Government in India, as are likely to induce or cause them to resist or disobey the lawful authority of the Government of India or of such other Government, or to abet such resistance or disobedience, or by reason of such disaffection to break the peace or to violate the law, or to abet any such breach of the peace or violation of the law, shall be punished," &c.

The section now before the Council did not make it criminal to do things which people knew to be likely to excite disaffection. To punish the doing of an act which you knew to be likely to produce disaffection might be to punish a man for doing an act which he had a right to do, although it produced disaffection. He could imagine many things which a public man might have a right to do, even at the expense of exciting disaffection, but which, nevertheless, should not be punishable. Then, the section proceeded to describe the kinds of disaffection which it would be a crime to excite. These were such feelings of disaffection as were likely to induce any portion of the people, not only to resist, but to disobey the authority of the Government of India. That was carrying things a very long way, because the mere omission to do what you were told to do was disobedience. The mere non-payment of a tax was disobedience; and to punish a man for doing what was likely to induce people to disobey an unpopular law of any kind was far beyond what in his (MR. STEPHEN'S) judgment was desirable. In short, the Committee came to the conclusion that this clause was considerably more severe than the clause originally drawn by the Commissioners. That clause was greatly discussed at the time, and adhered to after careful discussion; and although he (MR. STEPHEN) was not prepared to say that it was the best that could have been adopted, the Committee unanimously came to the conclusion that the best course was to leave it as the Commissioners had settled it. The clause was somewhat

lengthy, but its substance was sound good sense. It provided that anybody who attempted to excite disaffection might be punished; but it insisted on the distinction between disaffection and disapprobation. It expressly provided that people might express or excite disapprobation of any measure of the Government, that was compatible with a disposition to render obedience to the lawful authority of the Government; in other words, you might say what you liked about any Government measure or public man; you might publish or speak whatever you pleased, so long as what you said or wrote was consistent with a disposition to render obedience to the lawful authority of Government. Let it be shown that the matter complained of was not consistent with a disposition to obey the law; let it be shown that it was consistent only with a disposition to resist the law by force, and it did fall under this section. Otherwise not.

He now proceeded to assert that this law was substantially the same as the law of England at the present day, though it was much compressed, much more distinctly expressed, and freed from a great amount of obscurity and vagueness with which the law of England was hampered.

He would shortly refer to a comparison which had been drawn between the section in question and the law of England, in a memorial presented by the British Indian Association—in itself perfectly proper and well expressed, although he disagreed with many of its arguments. That memorial shewed that those who drew it up were under a very false impression as to what the law of England on this subject was. They said:—

"The experiences of England have always been a guide in matters of legislation in India, and it may fairly be asked whether there is any law in force in that country analogous to the one proposed for India? The Committee are aware of none."

They then proceeded to quote at length several passages from a work published by him (MR. STEPHEN) some years since under the title of 'A General View of the Criminal Law of England' One passage quoted was in these words:—

"In the year 1795 an Act was passed (35 Geo. III, cap. 7) which considerably enlarged the definition of treason, embodying by express enactment, in the old definition, most of the constructions put upon it by Hale and Foster. The definition includes 'any person who shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, maim or wounding, imprisonment or restraint of the person of the sovereign, or to deprive or depose him from the style, honour, or kingly name of the imperial Crown, or to levy war against His Majesty, in order by force and constraint, to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate, or over-awe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other His Majesty's dominions, and such compassings, &c., shall express, utter, and declare, by publishing any printing or writing, or by any overt act or deed.' By an Act passed in 1848, on occasion of the violent

language used in newspapers and elsewhere by the Irish agitators, this Act was repealed, except in so far as it related to offences against the person of the sovereign; but the other clauses were re-enacted, and their operation was extended to Ireland, though the quality of the offence was altered from treason to felony punishable by transportation."

Upon these passages, the memorial observes :—

"There is nothing in the above to shew the existence of a law similar to the one proposed for India. The Committee need hardly observe that there is considerable similitude between the political relation of India and Ireland to England, though happily the feeling of the people here is one of strong attachment to the British Government; but if the Imperial Parliament has not seen the necessity of restraining the right of speech and writing in Ireland, surely the Indian legislature has much less reason to do so. If the Treason-felony Act, cited by the Hon'ble Mr. Stephen in his book, is deemed sufficient for the safety of the State in Ireland, it may well be deemed equally sufficient for the same purpose in India. The only omission which there was in the Indian Penal Code on the subject has been supplied by section five of the Bill under notice, and the succeeding section is therefore quite superfluous."

The Association would seem not to have understood what they quoted, for the passage which he had read distinctly stated that, to express in writing any "compassing," &c., (which was equivalent to any intention or wish) to compel the Crown by force to alter its measures, or to do many other things, was what is called in England treason-felony, which was much the same as the offence created by the section under consideration.

He would now proceed to state how the law of England to which the Association appealed stood upon this subject. It consisted of three parts. There was, first, the Statute, commonly called the Treason-Felony Act (technically the 11 Vic., c. 12); secondly, the common law with regard to seditious libels; and thirdly, the law as to seditious words. He might observe, in regard to this law, that section 2 of the Penal Code enacted that every person shall be liable "to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof." Hence, the criminal law which prevailed before the passing of the Penal Code was still in force as to such offences as the Code did not punish. The result might very possibly surprise some gentlemen, especially those who were connected with the Press in the presidency towns, and he would draw attention to it. In the presidency towns, the criminal law of England was still in force, except in so far as it was superseded by the Penal Code. Any person who, within the Mahratta ditch or in Bombay or Madras, wrote anything which at common law would be a seditious libel, would be liable to the penalties which the law of England inflicted, which were fine and imprisonment at least, to say nothing of whipping and the pillory. No doubt the penalties last-mentioned would not now be enforced, but the law still existed, and he (MR. STEPHEN) wished to point out that, so far from enacting a

severe law, we were, in truth, doing away to a considerable extent with severe laws. As for the Mofussil, it appeared that the Muhammadan criminal law prevailed so far as it was not superseded by the Penal Code. He had tried to ascertain what the Muhammadan law was. He had found nothing on the subject of seditious libel, but had found much on the subject of rebellion, which, however, was so vaguely expressed, that it might possibly justify the infliction of very strange penalties for sedition and libel.

The first part, then, of the English criminal law was the Treason-Felony, the third section of which was as follows:—

"And be it enacted, that if any person whatsoever after the passing of this Act shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most Gracious Lady the Queen, Her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, Her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other Her Majesty's dominions or countries under the obeisance of Her Majesty, Her heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the Court shall direct."

That long string of words meant in plain English this. Any one who conceived in his heart any one of all these intentions, and who shewed that intention either by any act or any writing (for the provision as to words was temporary), was liable to transportation for life. That section was quoted by the British Indian Association to show that the section proposed was more severe than the law of England. It shewed, in fact, the very reverse, for it shewed that the law of England, though similar to the proposed section, was more severe. The proposed section says, if you excite feelings of disaffection, either by speaking or writing, you shall be liable to punishment; and the law of England says, in substance, that if you yourself feel disloyal towards the Queen and show that feeling by any writing, you shall be liable to punishment. The proposed section did not relate to a man's feelings or wishes, but simply to his writings or words, and the feelings which they were

intended to produce in others. But the great peculiarity of the English law of treason was to regard every thought of the heart as a crime, which was to be punished as soon as it was manifested by any overt act. That was the English law as it stood according to the Treason-Felony Act.

He came now to the law of seditious libel; and in the book which was commonly quoted on all subjects connected with English criminal law (Russell on Crimes), there was a very long history about seditious libel compiled from various authorities. The law was very vaguely expressed, and he hoped that some one might soon reduce to a few short sentences the great mass of dicta on the subject.

The following was put forward as the test by which the seditious character of a publication on political subjects might be determined:—

"Has the communication a plain tendency to produce public mischief by perverting the mind of the subject and creating a general dissatisfaction towards Government?"

That was infinitely stronger than anything now proposed. It would make any publication a crime which excited any general dissatisfaction with Government, however reasonable that dissatisfaction might be. The proposed section did nothing of the kind. It said, in so many words, you may create disapprobation as much as you please, so long as it is consistent with a disposition to render obedience to the lawful authority of Government.

He would proceed to notice some of the other objections which had been raised to the proposed clause. He thought that, if those who urged those objections carried them out to their legitimate results, they would see that their objections really proved too much, for they proved, not that the particular section proposed was a bad one, but that there should be no legislation on the subject. It was said that the language of the section was vague; that disaffection was a vague word. He was perfectly willing to admit that that statement had some truth in it. But all human language was more or less vague. In a general way, everybody knew what disaffection was, but in that and every other word of the sort, there must be a good deal of vagueness from the imperfection of the human mind itself. Look, for instance, at such words as "negligence," "morally wrong," "malignantly," "possession," all of which occurred in the

Penal Code. They were all more or less vague; but if the law was honestly administered, it would be found that they really carried out the purposes which they were intended to effect.

The second objection, as to the severity of the punishment, deserved more attention. With respect to that, he had only to say that there were cases known to the law (in English law they were very common) in which persons brought themselves within the same definition with various degrees of criminality. If you looked at any section of the Penal Code and set yourself to conceive possible cases, you would find that, in numberless instances, most severe punishments could be inflicted for very small offences indeed. So strongly had that been felt by the legislature, and so strongly, too, by the framers of the Code themselves, that they had adopted the principle which he (MR. STEPHEN) had always regarded as an extremely sound one, of almost entirely excluding minimum punishments. In a few cases there was a minimum penalty; for instance in the punishments for murder and waging war; but he did not at present remember any other. With those exceptions, in every instance they had left it to the discretion of the person who tried a case to inflict the smallest punishment, imprisonment for a day, or a nominal fine. That was the case with regard to ordinary crimes, such as theft and murder, and other crimes against person and property, but surely there was no crime with regard to which it was so true as the crime of exciting disaffection. He could conceive instances in which a man who had done so was deserving of any punishment which the law could inflict. In 1857, for instance, a man who excited disaffection would have been guilty of a terrible offence. On the other hand, there might be cases where, from the strength of the Government, and the contemptible character of the crime, it might not be desirable to inflict more than a slight punishment. The punishment required did not vary according to the mode in which the disaffection was excited, but it varied according to the state of public affairs, and the position, character and circumstances of the criminal; and for that reason the widest latitude in the punishment for the offence was required. He would observe that, in criticising any provision of law, especially of the criminal law, credit ought always to be given to those who were to administer it for some degree of common sense and moderation. Let him call attention to a law which had originated with his illustrious predecessor—Lord Macaulay—the provisions of the Penal Code about defamation:—

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to

Defamation.

believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Section 499 and explanation 4 taken together defined defamation thus—'making any imputation concerning any person intending or knowing or having reason to believe that that imputation will lower the moral or intellectual character of that person.' There were, no doubt, many important exceptions, but that was the general rule, and by section 500 the offence of defamation might be punished by two years' imprisonment and fine.

He (Mr. Stephen) would ask His Lordship, or any one of his colleagues, whether he could say that he had ever been to a dinner-table at Calcutta, or anywhere else, where that law was not broken; where something was not said by somebody which conveyed an imputation concerning somebody else likely to lower his moral or intellectual character. Why, he saw before him those who were great masters of their pencil, and who had a power of representing persons in a manner which certainly would, by a visible representation or design, lower their moral or intellectual character; and by the Indian Penal Code any person who did this was liable to simple imprisonment for a term which might extend to two years, or to a fine, or to both. In no society in which he had ever been, or which he had ever heard of, would any person escape punishment if this law were carried out to its full extent, unless, indeed, he were the dullest of mankind. But severe as the law was, it was reasonably administered, and he did not think that either private conversation or public writing on general subjects was, in point of fact, under greater restrictions in India than elsewhere. He mentioned this in connection with the section now under the consideration of the Council, as showing that, in all cases, you must credit the persons who would administer the law with some degree of common sense.

There was another objection which had been urged by the British Indian Association, to which great weight was due. They said that, if legislation once took the shape proposed, there would be no end to malicious prosecutions. This, however, was completely answered by the provision, that no prosecution should be commenced under this section except under the authority of the Government. That shewed that this was a weapon to be used in no case except where the peace of the country was, in the opinion of those who were put at the head of the Government, seriously endangered, and that was a very effectual check to prevent the law being used in an oppressive manner.

Another objection was that the law punished intention, and we were told that the effect of it would be, that people whose intentions were innocent might be convicted. That merely amounted to saying that mistakes might be made; but that was the case with all laws. In the Penal Code, wherever you might refer to it, you would find that the intention made the crime. It was strange that that argument should be used, when it was considered that the Act which declared that the intention of the publisher of an alleged libel should be determined like other questions of fact, had always been regarded as one of the greatest triumphs of the popular cause in England.

There was one last objection to which he would refer in a more general way. It was the general phrase that this was an interference with the liberty of the Press.

Short phrases of this kind involved a surprising quantity of nonsense. He thought that that unfortunate phrase in particular had been made the subject of more fallacies than almost any other sentence. Liberty and law simply excluded each other: liberty extended to the point at which law stopped; liberty was what you might do, and law was what you might not do. To advocate the liberty of the Press absolutely, would be nothing else than to advocate the doctrine that everybody should be allowed to write what he liked. That was obviously absurd. Everybody admitted that personal slander ought not to be permitted: it confused the whole matter. Hence the phrase 'liberty of the Press' was mere rhetoric. It contained no definite meaning whatever. The question was not whether the Press ought or ought not to be free, but whether it ought to be free to excite rebellion. He did not believe that any sane man would say, in so many words, that all people ought to commit any crime whatever, so long as they did not commit overt acts themselves; but no degree of liberty short of this would justify a journalist or any one else in exciting people to commit rebellion. The British Indian Association said:—

"The Committee will be the last persons to believe that the noble Lord at the head of the Government, or his hon'ble and learned colleagues, themselves nurtured under the free institutions of their native land, and some of them, perhaps, once members of the great fourth estate, the claims of which the Committee now advocate, are inimical to a free Press in India; but they will not rule for ever, and it is difficult to say what they or their successors may do in times of political excitement, when passions may be excited by hostile criticisms, and personal feeling may usurp the place of judgment."

With regard to this last observation he had a few remarks to make. He perfectly understood what was meant by some of them "being members of the

great fourth estate;" it seemed to say that when he (MR. STEPHEN) was in England he used to write for the newspapers. That was perfectly true, and he was not ashamed of it. Journalism, when properly conducted, was as honourable a pursuit as any other. He made this personal remark to show that he took a special interest in journalism. He could not imagine a worse policy than to permit journalists to do what they would not permit other people to do. If we wished the Indian Press to be what it ought to be; if we wished it to be conducted honestly and to criticise the proceedings of Government fairly; we could not do worse than treat it like a spoiled child. It would be monstrous to say to any newspapers, Native or English, "We permit you to slander private persons and to excite the public at large to rebellion and massacre, because we want to nurse you up into something great." That was not the way to bring the Press or any other profession to good. We should protect them so long as they did not commit crime, and punish them if they did. It had been said that a few prosecutions would crush the Native Press, and that they were not strong enough to bear the possibility of being misunderstood and punished for expressing intentions which they had never entertained. Such apprehensions appeared to him contemptible. Men must be content to take the risks incidental to their profession. A journalist must run the risk of being misunderstood, and should take care to make his meaning plain. If his intentions really were loyal, there could be no difficulty in doing so. If not, he could not complain of being punished.

Let us consider, however, whether this terrible danger did really exist. He had already shewn what was the law of seditious libel in the presidency towns, and those were the towns in which the great majority of newspapers were published. One paper had said, "if this law passes, we shall never know what we might say and what we might not." If they wanted to see what they might say, all they had to do was to read the English newspapers, which were published under the same law, and they did not write very much as if they were under tyrannical rules. Their liberty included the following items at least. They might refute anything which had been put forward and abuse anybody for bringing it forward; and if they wanted to see more particularly what sort of things they were perfectly at liberty to say, they had only to refer to the files of the English newspapers printed during the last eight months, and read the articles on the Income-tax. Nobody ever said or thought that the authors of those articles were exciting disaffection. If a man was permitted to say everything that had been said about the members of the Government in general, and particularly about his hon'ble friend who was in charge of the

Financial Department, and was not satisfied with such liberty, he (MR. STEPHEN) must say that that man had a most insatiable appetite for using strong language. So long as the English papers in this country published what they did publish, about every man, every measure, every principle which they thought it right to discuss, the Native papers need not be under the smallest apprehension that they would fall under the pale of the law. He would appeal to anybody who knew what English public life was, whether any Government which existed in this country was ever likely to bring a newspaper published in this town into Court on a charge of exciting sedition for mere discussion, however violent, personal, or unfair. It was absurd to suppose that anybody here wished to do it, or would dare to do it; it would be altogether repugnant, not only to the law, but to the habits in which English public men were trained up.

So much with regard to what people might say. He would now state what they might not say. They might not say anything of which the obvious intention was to produce rebellion. It might be difficult to frame a definition which would, by mere force of words, exactly include the liberty of saying all that you meant to allow to be said, and exclude the liberty of saying all that you did not mean to allow to be said. But although there was considerable difficulty in framing a definition of the kind, there was none whatever in drawing the line for yourself. Every man who was going to speak, every man who was going to write, ought to know perfectly well whether he intended to produce disaffection. If he did, he had himself to thank for the consequences of his acts: if he did not, he (MR. STEPHEN) was quite sure of this, that no words which that man could write would convey to other people an intention that he did not intend to express. He (MR. STEPHEN) did not believe that any man who sincerely wished not to excite disaffection ever wrote anything which any other honest man believed to be intended to excite disaffection. You could no more mistake the severity of criticism, or the severity of discussion, for the writing of a person whose object was to produce rebellion or excite disaffection against the Government, than you could mistake the familiarity of friendship for the familiarity of insult. Try to define what it was that made a difference between that neglect of ceremony which you expect from a friend, and that neglect of ceremony which was intended for insult, and you would be unable to express it in words. But no one could mistake the two things, and it was the same with exciting political disaffection.

Finally, he wished to observe that, if any one thought that there was absolutely no occasion for any law of this kind, he ought to look back to incidents

which happened not many weeks ago. A man was convicted and sentenced to transportation for life, substantially for committing the very offence at which this section was directed: it was preaching a *Jehád* or holy war against Christians in India. He (MR. STEPHEN) had carefully read the evidence, and supposing it to be true, it proved that this person was in the habit, for weeks and months and years, of going from village to village, and preaching in every place he came to that it was a sacred religious duty to make war against the Government of India. Is that to be permitted, or is it not? If any one really meant to say that it was no crime to go into villages and tell the people that a rebellion against the Government was a sacred duty, he could not argue with such a person. But if such conduct was admitted to be a crime, he would ask any person who objected to the proposed section to frame a better one. Besides the man to whom he had referred, there were eight other men under commitment at Patna, who were charged with very similar offences.

Having referred to this matter of the Wahábí conspiracy, he had just one more remark to make on the subject. We had all seen, in the newspapers published both in England and in India, accounts of the disaffection created by that conspiracy represented in a very formidable manner. It was his belief, however, that although the matter was one which ought not to escape the attention of the Government, and which certainly had been shewn to exist, yet it was the easiest thing in the world to exaggerate its importance and extent. He had read with great pain—and he was very glad to have an opportunity of disavowing and denying—an imputation made in some papers against the general loyalty of the Muhammadan population of India. These imputations were most unfounded and unjust, and he believed that the only class of persons who deserved them were one of those sects of fanatics who were to be found in every creed. Fanaticism was by no means peculiar to the Muhammadan religion. No one who had seen or read much of the world in which we lived, could find it in his heart to speak with disrespect of any of the great religions which had gained the affections of mankind; and he would not say one word against a religion which had preached, with unequalled efficiency, the great cardinal doctrine that lay at the root of all creeds. But it was a common misfortune of all creeds that in every religion there were those who would carry their theories to extreme results, to an extent inconsistent with peace and good order. His Lordship knew better than most of us, that there was no class of people in the world who had greater public virtues of every kind than the Roman Catholics, and there were no better men and women in private life. But there was a way of looking at the Roman Catholic creed which had been adopted

by some persons, and which was inconsistent with real allegiance to the civil Government. And the same might be said with regard to the Protestant religion, although it had been the very life of many European nations, and especially of our own. There had been Protestant fanatics who had been fully as dangerous as Roman Catholics. We had had those who believed that the Pope ought to be able to depose Kings, and we had also had those who preached that there was no King but Jesus, and that they, and they alone, were his representatives. There were some who entertained the opinion that peace between the Muhammadan population and their Christian rulers, however just, was a thing impossible, and that it was a religious duty to make war under such circumstances. He could only say on this subject, that if people would declare war against mankind, they must take the consequences.

It was not with regard to them that he wished to speak. He wished to speak more particularly of the degree in which that doctrine had been rejected by the great body of the Muhammadans. He could not of course enter upon technical questions as to the provisions of the Muhammadan law, but he wished to state as publicly as possible that the Government of this country had no suspicions of the Muhammadan community as such, and knew how to distinguish between the rash opinions of a small and obscure sect, and the sentiments of the vast Muhammadan population, as expressed in the papers he had before him on the subject. He had several letters, but he would only read one: it was the opinion of a large number of Maulavís upon the question of the lawfulness of a *Jehád* in British India, which he would read to the Council:—

"The Mussulmans here are protected by Christians, and there is no *Jehád* in a country where protection is afforded, as the absence of protection and liberty between Mussulmans and infidels is essential in a religious war, and that condition does not exist here. Besides, it is necessary that there should be a probability of victory to Mussulmans and a glory to the Islam. If there be no such probability the *Jehád* is unlawful.

The concluding sentences of the futwa were to the effect that, if a Christian were oppressive and did not afford protection, a *Jehád* would be lawful if there was a probability of success. Upon this he need say nothing more than that it was much like the common European opinion, that when a Government is very bad, the question whether rebellion is justifiable is mainly a question of prudence. In the present case this question did not arise. The substance of the first part of the futwa was that a *Jehád* was unlawful against a Government which afforded, and by people who had accepted, protection. Whether this opinion was really contained in the Korán and the traditions, was

not for him to say; but this he would say most emphatically, that the common good sense and common good feeling of the whole human race would justify it. He should be sorry to believe that the religion of a large portion of mankind could teach the horrible doctrine that it was lawful for a man to pretend to live in peace and good terms with his rulers, to submit to them, to accept offices from them, and to nurse in his mind a fixed intention of breaking out into massacre and plunder against them on the first favourable opportunity. He was glad to believe that this was repudiated by orthodox Muhammadans. The doctrine which the gentlemen in question asserted to be the true doctrine of their religion was that, where protection was given and accepted, there arose a contract between the sovereign and the subject which it was forbidden by every law of God and man to break. If liberty and protection formed a contract, no subject ought to rebel against his sovereign so long as the sovereign discharged his part of the contract; and to break that contract was not only to commit a great crime, but also a most grievous sin. That was a doctrine which certainly commended itself to the reason of the whole human race. It rendered it possible and natural that loyalty should exist, and would, he trusted, continue from generation to generation to bind together the Queen of England, her representatives in this country, and the vast body of her loyal Muhammadan subjects.

The Motion was put and agreed to.

The Hon'ble MR. STEPHEN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN REGISTRATION BILL.

The Hon'ble MR. COCKERELL introduced the Bill for the Registration of Assurances, and moved that it be referred to a Select Committee with instructions to report in two months. He said that as, besides the Registration Act of 1866, there were two other enactments appertaining to registration on the Statute-book, the incorporation of the substance of these outlying enactments with the main law fell within the general consolidation scheme, and fresh legislation on the subject must have been undertaken for that purpose. Such legislation was further needed to provide for the exemption from compulsory registration of title-deeds granted by the Inám Commissioner in the Madras Presidency, and to extend the operation of the law to territories in which it was not at present in force.

Moreover, there were certain doubtful points in the existing law regarding which the Civil Courts had pronounced judicial decisions, and questions had arisen from time to time which had been noted as requiring the attention and consideration of the legislature when the occasion for reviewing and amending the law should arise.

The new system of registration had now been in operation, at least in the provinces into which it was first introduced, for the last five years, and the undoubted success of the measure emphatically testified to the wisdom and ability with which the law regulating that system was framed.

The steadily progressive increase, year by year, of the number of instruments registered, which the statistical returns of the Registration Department exhibited, marked the growing popularity of the system. The total number of registrations effected in the last year of report was upwards of 800,000, more than half of which occurred in lower Bengal and the North-Western Provinces. In those territories, the progressive rate of increase had been such, that the number of instruments registered during the latest year of report was considerably more than double that of the first year,—a result which was probably mainly due to the energy and ability of the officers directly charged with the supervision of the local administration of the Registration Department.

To give an idea of the magnitude of the transactions publicly recorded under the present system of registration, he might mention that the estimated value of the property affected by documents registered in 1869-70 was, in lower Bengal, about 8½, and in Madras 7½ crores of rupees.

The returns indicated a remarkable variation of the relative proportions of compulsory and optional registrations.

In the Panjáb notably, and also in the North-West and Central Provinces, the optional registrations largely preponderated, whilst in Madras and Bombay especially, and, in a less degree, in lower Bengal, Mysore and Coorg, the directly opposite result was obtained. This was, no doubt, partly due to the larger number of transactions, forming the subject of optional registration, which presumably took place in and about the great trading marts of Northern and Central India, but it was also, he thought, in some measure to be accounted for by the greater facilities afforded for registration through the lower minimum rate of registration-fee and, the more accessible registering agency which obtained in the provinces in which the excess number of optional registrations prevailed.

The rates of fees charged for registration under the different local administrations varied not only in amount, but also in regard to the principle on

which the amount was fixed. In Bengal one *ad valorem* rate obtained for both classes of registrations, whilst in most of the other provinces, with the view of encouraging optional registration, a preferential rate was accorded to that class. He thought the equity of such an arrangement open to question.

Generally, too, it might be said that the average rate of fees was too high even in Bengal proper, where it was lower than in any other province, and some portion of the surplus which now annually accrued from the operations of the Registration Department should certainly be devoted to making registration cheaper, if its utmost practicable development was to be looked for in the future.

At present, the average fee for each registration ranged from one rupee and nine annas, in Bengal, to upwards of two rupees and eight annas, in Madras and Bombay.

Still more essential to the promotion of the successful working of the system was the easy accessibility of the registering officer, and there was doubtless much room for improvement in this respect.

He would not take up the time of the Council by going into any detail of the results of the working of a special registration-agency. It would be sufficient to say that it had everywhere been found eminently successful in inducing registration.

Experience had shown that the multiplication of registration-offices, the devotion of the *exclusive* services of Registrars and Sub-Registrars to the work of registration, and the maintenance of an active supervision had, wherever they had been in operation, been attended by a great increase in the number of registrations, both as regards instruments the registration of which was optional, and those which were by the law declared to be invalid unless registered. So, also, every temporary curtailment of registering agency,—he referred to the case of lower Bengal, where an attempt to place two or more registration-offices under one Sub-Registrar, on the plan of the Small Cause Court administration system, had been made, but was now abandoned—had been followed by a corresponding decrease in the number of registrations.

To promote the development of the registration-system, a larger expenditure was required, and it seemed to Mr. Cockerell that some legal provision was wanted to enforce this. At present, a large surplus accrued yearly to the general revenue. That surplus, reckoned from the commencement of the registration-scheme up to the current year, aggregated no less a sum than thirteen lákhs of rupees. It was never intended that the registration law should

be worked so as to make it a source of public revenue. If the Department paid its expenses without any charge, or even with only a small charge, on the public revenue, the anticipations of the projectors of the system would, as regards its financial aspect, have been fully realized.

He was strongly of opinion that greater latitude must be given to the local administrations in the expenditure of the income of the Department for the purpose of increasing its working efficiency.

Much economy of labour might be effected by the relaxation of some of the stringent provisions of the existing law in regard to the forms and records to be prepared and kept in the different registration-offices.

In the interests of the public, it was important to refrain from imposing any legal obligation the public advantage to be derived from which was not commensurate with the expenditure of labour entailed by it, and viewed in this light, Part XI of the Bill certainly went too far.

The number of indexes required to be kept under the present law might be substantially reduced without the smallest sacrifice of public convenience. All that the law need make obligatory on registering officers was the keeping up indexes Nos. I and II. The choice of such subsidiary records as might serve to assist the search for registered documents and the identification of the property affected by them, might be advantageously left to the discretion of the Registrar General, subject to the general control of the Local Government.

The provisions of sections twenty-one, seventy-three and seventy-six, in regard to the transmission of copies, called for amendment. Much unnecessary labour was imposed on registering officers by the present requirements of the law in this matter.

Greater facility for registration would be afforded also by some relaxation of the provisions of section twenty-nine, in regard to the place where an instrument was to be presented for registration. It frequently happened that the convenience of all the parties who had to appear before a Sub-Registrar would be met by power to register at places where no portion of the property forming the subject of the deed requiring registration was situated within the local limits of that officer's jurisdiction. Instances had come to notice where, to meet the conditions of the law, a fictitious tree or strip of land had been inserted in the deed, to make it registrable at a particular office to which it best suited the convenience of the parties to the transaction to take the document for registration.

The Bill now before the Council provided for the consolidation of the existing law and its extension to British Burma. It also proposed—(1*st*) to exempt from compulsory registration Inám title-deeds granted by the Inám Commissioner in the Madras Presidency; (2*nd*) to render compulsory the registration of written authorities to adopt; (3*rd*) to extend to Sub-Registrars the power of registering wills, receiving sealed covers for deposit, and instituting, without reference to the District Registrar, criminal prosecutions; and it further contained amendments of the law on a very few points in regard to which it had not worked satisfactorily, and on others where a certain degree of ambiguity as to the intentions of the legislature had been suggested by the decisions of the High Courts.

One of the two main objects of the registration law was the prevention of fraud, in regard to the devolution and transfer of real property, theretofore so prevalent in this country.

There was no form of transfer of property which was attended with so much risk of fraudulent practices as that which arose out of the law of adoption. Where the authority to adopt was given verbally, there was no means of protecting the person injured by the falsely propounded authority, but the registration law did afford the means of reducing the risk of fraud where the authority was in writing.

It might be said that the written authority to adopt was in the nature of a testamentary document, and should not be treated differently from a will, the registration of which was allowed to remain optional.

But wills, in Bengal at least, where they were to be found in far greater numbers—as the registration statistical returns clearly proved—than in other parts of India, were by the recent extension of the Indian Succession Act already subject to the test of probate, and it might reasonably be expected that the testamentary portion of the Succession Act would before long be extended to all places in which the practice of will-making was shown to exist.

The extension of the power of registering wills, which by the existing law was vested in Registrars only, to Sub-Registrars, had been rendered especially necessary, to prevent inconvenience to the public from the creation of special District Registrars, and the consequent reduction of the number of District Registrars' offices. It might be doubted, however, whether the proposed permission to deposit sealed covers at the offices of Sub-Registrars would work well; for, having regard to the expense which such a provision would entail, it would be hardly feasible to supply fire-proof boxes for the safe custody of those

covers to all registration offices, and there would be a difficulty in carrying out the provisions of section forty-five as to the identification of the persons by whom such covers had been originally deposited.

Section thirty-six of the Bill required the appearance of all the parties to an instrument presented for registration before the registering officer within the period allowed for the presentation of the instrument. The peculiarity of the existing law was, that it provided for the presentation of an instrument only within a certain period, and placed no limit on the time within which the registration, if admissible, must take place. The limitation as to presentation might serve the purpose of guarding against fraud, but the completeness of the record of title was impaired by the want of some restriction as to the time within which the registration must be effected.

Connectedwith this subject was the alteration contemplated by section fifty-seven. The present practice was to enter a copy of any instrument presented for registration in the register at the time of such presentation. This system, obviously in the case of instruments not eventually admitted to registration, not only involved useless labour, but also had the effect of impairing the correctness of the record; and it was therefore proposed to substitute for it the provision of the Bill; unless, however, some limitation was applied to the completion of the registration of an instrument, the practice of transcribing it at the time of presentation could hardly be dispensed with.

Sections forty-one and forty-two of the Bill were framed to meet the present difficulty in securing the registration of all decrees of court affecting the title to immovable property, and in the realization of the fees due on such registrations: the amendments of the existing practice propounded in these sections were in accordance with the suggestions of the High Courts.

Many officers doubted the expediency of maintaining the requirements of the law in regard to such registrations.

It was found impracticable to provide for the registration of decrees and orders of revenue courts and officers, and the theory of working the registration law so as to maintain a complete record of title to real property in the archives of a single Department, was held to be incapable of attainment.

It became then an important question for the consideration of the Committee to which this Bill might be referred, whether the gain to the object of completeness of record was commensurate with the expenditure of time and labour which the maintenance of this class of registrations, numbering about 85,000 per annum, involved.

The case for the maintenance of the provisions of section forty-one was certainly stronger than it was as regards section forty-two, but he was of opinion that both sections might with advantage be omitted.

Of the amendments suggested by the rulings of the High Courts, the most important was to be found in sections forty-eight and forty-nine. Section forty-eight of Act XX of 1866 declared, broadly, that all instruments (excluding wills and authorities to adopt) duly registered, and relating to any property movable or immovable, should take effect against any oral agreement or declaration relating to the same property.

The High Court of Calcutta held, in the case of *Selam Sheikh* v. *Bydonath Ghatuk*, that this provision could not be intended to apply where the parol contract was supported by the transfer of possession, and could not be reasonably construed as entitling a registered deed of conveyance to prevail against a title founded on such possession.

An attempt was made in the Bill to settle this point, by drawing a distinction, such as was believed to be in accordance with the general policy of the registration law, between immovable and movable property, applying the words of the existing law in their widest signification to the case of the former class of property, and narrowing them to the Court's construction as regards movable property.

The question would require the careful consideration of the Select Committee. He was not prepared to say that he thought this provision of the Bill offered the best solution of the doubt. It seemed to him that, even in the case of immovable property, a registered deed could only be regarded as conferring a *primâ facie* paramount title, and that it could not ultimately prevail against possession, fortified by proof of adequate consideration having been given for such possession.

In section fifty-three, an amplification of the provisions of the corresponding clause of the Act of 1866 had been made, embodying the rulings of the Madras High Court in the cases of *Pudiyaporayil Mamy* v. *Madakarath Amman Kutti*, and of *Subbuviyan petitioner*, to the effect that the remedy allowed by the law on this subject could be enforced only by or against the actual parties to the specially registered contract.

To section seventy-five, a new proviso had been added in the sense of the ruling of the High Court of Bombay in the matter of the Will of *Nagin Dass*, authorizing the registering officer to surrender a sealed cover deposited under

section forty-four, when such cover was called for by a Civil Court for the purpose of probate.

This, however, left the case of a Will deposited under a sealed cover in a registration office, and required to be produced in a Civil Court as evidence, unprovided for.

The Bill contained other amendments of the existing law on minor points, to which it was unnecessary to make any special reference at the present time; but there was one important alteration of the law, not included in the Bill as it now stood, which was strongly advocated in some quarters, and especially by the Government of the North-Western Provinces.

At present, the registration of deeds affecting title to immovable property not exceeding one hundred rupees in value was optional. This exception to the general rule regarding instruments affecting that class of property was probably intended to prevent the conditions of the law working harshly in the case of transactions of a petty character; but as, in this country, the mass of transactions did partake of that character, the effect of the exception was to check very materially one of the chief objects of the registration-system, the attainment of a complete record of title to immovable property.

The very large number of documents of this class which were now registered, though their registration was optional, pointed to the conclusion that to make such registrations compulsory would entail no hardship or serious inconvenience, whilst the gain to the completeness of the record of title to immovable property, which the registration-system was specially designed to afford, would be very great.

Some exception would of course have to be made in respect of leases for fixed periods not exceeding one year, or the cost of registration might be found to exceed the value of the occupancy; but if the registration-charges were reduced as they ought to be, and the facilities for registering increased by improved agency, in no other cases could the application of compulsory registration be reasonably objected to.

Since the Bill was drawn a proposal had come up to extend the operation of the law to Oudh.

In that province, a rough system of voluntary registration had been in force for the last ten years. In some respects that system had worked well, but the

advanced requirements of the province were now thought to call for the more elaborate machinery which was elsewhere in operation, and as the local administrative officers were generally in favour of extending the law, which the Bill made applicable to all other parts of British India, the expediency of obtaining a general uniformity of system through such extension could hardly be questioned.

The Motion was put and agreed to.

PRISONS' ACT EXTENSION (COORG) BILL.

The Hon'ble MR. CHAPMAN moved for leave to introduce a Bill to extend the Prisons' Act, 1870, to Coorg. He said that there was no law in the province of Coorg to regulate prison-management and discipline. At the request of the Chief Commissioner, it was proposed to introduce Act XXVI of 1870, which was the latest enactment on the subject.

The Motion was put and agreed to.

COMMITMENTS FROM ANDAMANS BILL.

The Hon'ble MR. CHAPMAN also moved for leave to introduce a Bill to authorize the committal of European British subjects by Courts in the Andamans to the High Court at Fort William. He said that European British subjects, who might commit offences at the Andamans not punishable with death and not within the jurisdiction of a Justice of the Peace, were, under Act XXI of 1863, section 41, committed to the Recorder at Maulmain. As there were now no regular means of communication between the Andamans and British Burma, it would be more convenient to have such offenders tried by the High Court at Calcutta.

The Motion was put and agreed to.

CHAUKÍDÁRÍ ACT EXTENSION BILL.

The Hon'ble MR. CHAPMAN also moved for leave to introduce a Bill to authorize the extension of the Chaukídárí Act (XX of 1856) to places where there is no Jamadár of Police. He said that, at present, the Chaukídárí Act could only be introduced into towns and places where there was a Government Police-station under the charge of an officer of rank not lower than that of a Jamadár. It was proposed to remove this restriction and to empower the Local Governments to apply the Act to all towns. The exemption in favour of

agricultural villages would remain unaltered. The proposal had originated with the Government of the North-Western Provinces, and had the approval of the Governments of Bengal and the Panjáb.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for the Registration of Assurances——The Hon'ble Messrs. Strachey, Stephen, Chapman and Bullen Smith and the Mover.

The Council adjourned to Friday, the 2nd December 1870.

CALCUTTA,
The 25th November 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

Office of Supdt. Govt Printing—No 1850 L C.—30-11-70.—220

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 2nd December 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major General the Hon'ble H. W. Norman, C. B.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble D. Cowie.

The Hon'ble MR. INGLIS and the Hon'ble MR. COWIE each took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

LIMITATION OF SUITS BILL.

The Hon'ble MR. STEPHEN introduced the Bill for the limitation of suits, and moved that it be referred to a Select Committee with instructions to report in two months. He would not occupy the time of the Council with any further remarks, as he had said what he thought necessary on a former occasion when he moved for leave to introduce the Bill. The Bill was of a very technical and professional nature, and would receive the careful attention of the Select Committee to which it would be referred. He would not, therefore, occupy the time of the Council by discussing any question of detail.

The Motion was put and agreed to.

CRIMINAL TRIBES BILL.

The Hon'ble MR. STEPHEN also introduced the Bill for the registration of Criminal Tribes and Eunuchs, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that, when he

moved for leave to introduce this Bill a short time ago, he had stated the general circumstances which were connected with the introduction of the measure, and he need not therefore refer again to the subject, more especially as some parts of it were of a very unpleasant nature. He would, however, say a few words about the provisions of the Bill as it had been prepared. It extended to the North-Western Provinces, the Panjáb and Oudh, and would not be passed without the receipt of an expression of opinion from those authorities on its provisions. One section of the Bill applied to the whole of British India: it authorized the arrest of registered persons found out of the district to which they belonged. That was necessary because it was the custom of these tribes to go far and wide in their marauding expeditions. It was, therefore, essential that they should be arrested when discovered in districts other than those to which they belonged. He was informed indeed that some tribes had been known to wander from the northern parts of the Panjáb to the Deccan, to Bombay and to various other parts of India. He might further observe that this Bill provided no means by which the executive officers of the Provinces in which it was to be enforced should communicate with other officers in other parts of India regarding registered persons who had wandered away from the districts to which they belonged. That required no law, for nothing would be easier, especially in these days of Post Offices, Telegraphs, and Photographs, than to get information from any part of India necessary to ensure the arrest of any gang of marauders.

The second Part of the Bill referred to the registration of criminal tribes, and adopted, with a few modifications which he thought would be approved of by the Panjáb Government, the regulations which lately existed on the subject, and which had been supposed to have the force of law until they were declared by the Chief Court to be illegal. The most important part of the work, the registration of the tribes, was to be done under the direction of the Magistrate, and the Local Government was to have the power of making rules prescribing the limits within which persons so registered should reside, the conditions under which they were to be permitted to leave those limits, and the conditions as to answering roll-calls, to satisfy the Magistrate that such persons were present at any given time within the prescribed limits.

The third Part of the Bill, which related to the question of the registration of eunuchs, was one to which he would refer as shortly as possible. He stated at length on a previous occasion the general nature of the evils to be dealt with: no doubt it was a difficult matter to suppress evils of that kind; but there were

one or two circumstances in this particular case which rendered it comparatively easy to suppress the evil with a minimum amount of risk of oppression. The cardinal provision in this portion of the Bill was that the Local Governments could frame registers of all eunuchs who were suspected of kidnapping or castrating children, or of committing the crime specified in section 377 of the Penal Code. They could also frame a register of the property of such persons. Eunuchs were to be punished for appearing in public in female clothes, or for dancing or playing music in the public streets or in private houses for hire. He believed that, if these provisions were rigorously carried out, they would put an end to a most horrible system. Of course, it was to a certain extent a strong measure to authorize the registry of private persons, but in this instance we started with the fact that a man belonged to a special class which it was impossible to mistake. Therefore, where there was suspicion that particular members of that small class were addicted to these horrible practices, they would be suspected not without good grounds. That was a subject on which he had nothing to add to what he had already observed on a previous occasion.

The Motion was put and agreed to.

PRESIDENCY SMALL CAUSE COURTS' GENERAL FUNDS BILL.

The Hon'ble SIR RICHARD TEMPLE introduced the Bill to repeal the law relating to the General Funds of the Courts of Small Causes at the Presidency Towns. He said that it would be in the recollection of the Council that, at the last meeting held at Simla, when he obtained leave to introduce this Bill, he stated all that was necessary regarding the reasons and the object of the measure; so he need not occupy the time of the Council on this occasion. As the Bill was one of the simplest character, it did not seem necessary for him to do more than to introduce the Bill in order that it might be published in the *Gazette*.

The Hon'ble MR. CHAPMAN thought it would be satisfactory if the Hon'ble Member would give the public, and especially that section of the public engaged in trade at the presidency towns, some kind of general assurance that the reasonable demands of the Small Cause Courts for suitable building-accommodation would receive preferential consideration.

The Hon'ble MR. ELLIS said that he had taken occasion, at an earlier stage, to express his dissent from some of the provisions of this Bill. He desired to guard against the supposition that he was opposed to the main object of the Bill, for it was based on a proper principle. Small Cause Courts were now no longer experimental and special establishments, but formed part of

the general judicial system of the country, and he hoped that by their extension, considerable improvement, both in the way of economy and efficiency, might be effected in the judicial administration. There was therefore no longer any reason for maintaining a special fund. But he had said on a former occasion that it would be better if retrospective action had not been given to this measure. He thought that, in giving legal effect to a principle admittedly sound, it would have been better had care been taken to guard against even the suspicion of there being any sordid motive in doing so. It would have been preferable had there been no possibility of anyone supposing that Government desired to obtain a pecuniary benefit in carrying out this measure. He trusted, therefore, that in the course of the proceedings, some such assurance as that which the Hon'ble Mr. Chapman had asked for might be given by the Hon'ble Member in charge of the Bill, that the public might rest satisfied that there was not any desire to obtain surplus funds and profits for the Financial Department, that next year, or whenever a reasonable demand for buildings for Small Cause Courts was made, it would be promptly attended to, and that advantage would not be taken of this measure to refuse to the Small Cause Courts and those interested in them such conveniences as they might need.

The Hon'ble Mr. Stephen said that, as his hon'ble friend (Mr. Ellis) had brought up this subject, he thought it would be desirable to explain the nature of the case somewhat more fully. In the meantime he would say again that it was impossible for any one to suppose that any sordid or improper motive had influenced the Government in adopting this measure. When Small Cause Courts were originally established in the presidency towns, it was provided by the Act that there should be a Fund composed of the fees paid by the suitors, which should be expended as the Government might direct, and should be called the Small Cause Court Fund. Of course, it was one object of the establishment of that Fund to provide for the expenses of the Courts, which were then looked upon as an experiment. But the Fund never was kept as a separate Fund: offices and establishments and buildings were provided, and the fees of the Small Cause Courts were carried to the general revenues of the country. It was stated that this involved a sort of breach of faith. But if the matter were carefully considered, he would ask with whom faith had in any way been broken, or what person was the worse for the transaction? It might be said that the suitors of the Court had suffered, because a part only, and not the whole, of the fees they paid for their litigation was appropriated to the accommodation of their successors in litigation, and to the building of Courts in which subsequent litigants might be heard. It was not asserted that the fees

were excessive or that the money had not been expended for the public advantage. Where then was the grievance? Consider what would have had to be done if this Bill had had no retrospective effect. It was his (MR. STEPHEN's) opinion, looking at the original Act, that if the Government of India, who had the power by that Act to order the Fund to be disposed of as they thought proper, had ordered a portion to be expended for the benefit of the suitors, and the rest to be carried to the credit of the Government of India, they would have been justified in so doing. They did not make that order, consequently there was a sort of a ghost of a Fund existing, which, if it were now embodied, might be applied to-morrow to the very purpose to which in fact it had been applied. Suppose that were done in compliance with the views of the Hon'ble Mr. Ellis, what would be the result? We should have to take an account of all the fees which had been received from the Small Cause Courts ever since their establishment. When we had got the gross amount of fees so received, we should have next to take an account of all the expenses connected with Small Cause Courts, such as the payment of the salaries of the Judges and their establishments, the rent of the buildings in which the Courts were held and the like. Then we should set-off one against the other; we should arrive at a balance, and the Government would then be able under the Act to do whatever it liked with that balance. The effect of the Act was simply this. The Government having done what they might have done with perfect regularity if they had previously gone through a perfectly useless form, the Act dispensed with the necessity for that form. How could there be any "sordid motive" for that?

As for the general notion that any Department in the country (whether it were a Small Cause Court or a Registration Office, or any thing else) was a sort of corporation which could have a surplus or a deficit, which could have a claim on the Government, or suffer a grievance of its own, if the surplus was not expended in extending its establishments, such a notion was to him absolutely unintelligible. He could conceive of no interests connected with any such institution except two. One was the interest of the man who had to pay taxes; the other was the interest of the public in the money raised by taxation. So long as the person who paid the taxes got value for the taxes which he paid (which he did in the case of Small Cause Court fees), and so long as that money was expended according to the best judgment of the Government for the advantage of the public generally, it seemed to him as absurd to say that a body called the Small Cause Court, or the Small Cause Court Fund, had any sort of grievance to complain of, as it would be in MR. STEPHEN's waistcoat pocket to say that it had a grievance, if he chose to carry his money in his trowser pocket. This illustration might be unsuited

to the dignity of this assembly, but it described literally the state of affairs. Any attempt to do justice between one public Department and another on any grounds except the ground of general public convenience, and to consider what part of the revenue ought to be applied to a particular purpose, was exactly like an attempt to decide in which pocket particular articles ought to be carried, on any other principle than that of the convenience of the man who wore the clothes.

The Hon'ble MR. CHAPMAN did not mean to say that any one was in a position to make a specific claim on the Government to these surplus funds; but he did think the principle ought to be admitted, that a separate branch of the administration, which was in the position of a milch-cow, ought and was entitled to receive more liberal treatment than a sterile one.

The Hon'ble MR. BULLEN SMITH did not suppose that anyone would dispute what had fallen from the Hon'ble Mr. Stephen, or attempt to deny that the Government had the right to do what it was proposed to do; and it would be, perhaps, impossible to lay a finger on any section of the community that could specially complain of it as a grievance. There were, however, many things which, although not absolutely and immediately binding on Government to perform, were yet highly expedient, and the concession now asked of the Hon'ble Gentleman was, he thought, one of them, as there could be no question that the public did consider that the appropriation of the funds in question by the Government was a grievance. The public considered that establishments which contributed considerable surplus revenue to Government, were entitled to receive more attention at its hands in the matter of accommodation. He would instance the Small Cause Court of Calcutta, a Court which, for years had yielded a large margin, and ask the Hon'ble Member, who lived in its immediate vicinity, to visit that Court in the months of April, May or June, and then report whether he considered it a fit place for the Judges to work during the long days of the hot weather, and whether the public were not entitled to expect better accommodation.

There was building a palace for the High Court; but he (MR. BULLEN SMITH) had it on the authority of the Advocate General that, as far as comfort was concerned in reference to this climate, he would never wish to plead in a better place than the Town Hall. The Judges on the appellate side of the Court did not, he believed, complain of their building, and he thought the claim of the Small Cause Court was much stronger. Whilst admitting the technical correctness of all that fell from the Hon'ble Mr. Stephen, he still would desire to support the Hon'ble Members who had previously spoken.

The Hon'ble SIR RICHARD TEMPLE, in reply, said that he could give no assurance whatever to the effect that a preferential claim would be conceded to Small Cause Courts in respect to the construction of buildings for their accommodation. That matter pertained to the Public Works Department, and was not at all embraced by the present Bill. Nor could he give any assurance, either way, as to whether a pecuniary profit would or would not be made by the State from the establishment of Small Cause Courts. He did not regard the matter in that light. The proceeds of the stamps or fees in these Courts were like all other stamp-revenue It had never been the practice to calculate whether the administration of justice yielded a profit to the State in the shape of surplus stamp-revenue; in other words, whether the stamp-revenue exceeded the expenditure on Law and Justice, or the reverse. No such balance was ever attempted to be struck. The stamps were regulated without reference to the cost of the Courts: the expenditure on the Courts was allowed without reference to the amount of the stamp-revenue.

It might be (as remarked by the Hon'ble Mr. Bullen Smith), that the Calcutta Small Cause Court was badly accommodated at present. This was a matter for the consideration of the Public Works Department, or of the Local Government, but it did not concern the legislature or the exchequer. He (SIR RICHARD TEMPLE) hoped it might be possible to improve the accommodation, but whether this would be possible, he could not say. It might be desirable to give the Court a better building, but no special claim could be admitted.

His hon'ble friend Mr. Ellis had said that, if this measure took effect prospectively, it need not take effect retrospectively. But the arguments were really as good for retrospective as for prospective effect. If retrospective effect were not given, the result would be that the sums now in hand in the treasury would have to be paid to the credit of the Small Cause Courts, and would have to be included in the payments of the year. In that case, *to whom* and *to what account* would they be payable? Apparently to the several Courts, each according to its share. But to determine such share, an elaborate account, difficult of preparation, would be necessary, which, after all, might turn out to be unsatisfactory. As he (SIR RICHARD TEMPLE) had explained at Simla, it was contrary to financial rule and principle for any portion of imperial revenues to be set aside for any special purpose whatever. The exchequer received all the income of the State, and defrayed all the expenditure. It was impossible to allow the Small Cause Courts, as regards their stamp-proceeds, to form an exception to so important a rule.

The case was really quite clear. Certain sums had been ordered to be held in suspense by legislative authority, which sums really belonged to the State as stamp-revenue. Without the rescinding of that authority, the due appropriation of this money could not be made. The original granting of that authority was a mistake: if such a proposal were now to be made, it would surely be rejected by the Legislative Council. When, however, it was made and became law, no effect had been given to it, and the sums had not actually been held in suspense. There was, therefore, room for rectification, which the Bill now to be introduced was intended to supply.

His Excellency THE PRESIDENT wished to say one or two words with regard to that part of the question which seemed to excite the greatest interest, namely, as to proper provision being made for the accommodation of the public in the Small Cause Court in Calcutta. This involved the general question of the construction of public buildings in this city. The Council were aware that very large reductions had been made in the grants for last year and for this year for public works. This necessitated a proportionate reduction in that portion of the grant set aside for the construction of public buildings in Calcutta. That being so, the Government of India thought it desirable to suggest to the Local Government that it would be right to finish the buildings in hand before the construction of any new buildings was undertaken. HIS EXCELLENCY thought that any gentleman who walked about Calcutta, and saw the incomplete state of many of the large buildings—an incompleteness which was to a certain extent discreditable to the State—could not doubt that a wise conclusion had been come to. It was to be hoped that the period was not far off when these buildings would be finished. When that had been done, HIS EXCELLENCY was certain that provision for the accommodation of the public in the Presidency Small Cause Courts would be considered along with other claims. In such a matter, the opinion of the Local Governments would have great weight, and if it seemed to them that the suitors in the Small Cause Courts had a claim to accommodation prior to that of other classes of the community, it would of course be attended to, and the necessary buildings would be provided. HIS EXCELLENCY accepted the general expression of opinion that the present accommodation was insufficient. In this respect, as in others, the general wishes and desires of the public would be attended to. Looking to the limited grants at the disposal of the Government, and the great loss arising from leaving half-completed buildings in the state in which they were in Calcutta, HIS EXCELLENCY certainly thought that they should not depart from the decision already come to, that the buildings in hand ought to be finished before others were commenced.

PRISONS' ACT EXTENSION (COORG) BILL.

The Hon'ble MR. CHAPMAN introduced the Bill to extend the Prisons' Act, 1870, to Coorg. He said that this Bill was of an entirely formal nature, and he, therefore, did not propose to move to refer it to a Select Committee.

COMMITMENTS FROM ANDAMANS BILL.

The Hon'ble MR. CHAPMAN also introduced the Bill to authorize the committal of European British subjects by Courts in the Andamans to the High Court at Fort William. This Bill also was of an entirely formal nature, and he would not ask the Council to refer it to a Select Committee.

CHAUKÍDÁRÍ ACT EXTENSION BILL.

The Hon'ble MR. CHAPMAN then introduced the Bill to authorize the extension of the Chaukídárí Act to places where there is no Jamadár of Police, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that, since he had come to the Council, he was informed that there were some points of principle involved in the Bill, and he would, therefore, propose to refer it to a Select Committee.

The Motion was put and agreed to.

EVIDENCE AND INSOLVENCY BILLS.

The Hon'ble MR. STEPHEN moved that the Hon'ble Mr. Inglis be added to the Select Committees on the following Bills :—

To define and amend the law of Evidence :

To amend the law of Insolvency.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Inglis be added to the Select Committees on the following Bills :—

To consolidate and amend the law relating to the local extent of the General Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities :

To consolidate and amend the law relating to the District and Subordinate Civil Courts in Bengal :

For repealing certain enactments of the Bengal Code:

To consolidate the law relating to Cattle Trespass:

For the Registration of Assurances.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for the limitation of suits—The Hon'ble Messrs. Chapman, Bullen Smith, Cockerell and Inglis and the Mover.

On the Bill for the registration of Criminal Tribes and Eunuchs—The Hon'ble Messrs. Chapman, Cockerell and Inglis and the Mover.

On the Bill to authorize the extension of the Chaukídárí Act to places where there is no Jamadár of Police—The Hon'ble Messrs. Stephen, Cockerell and Inglis and the Mover.

The Council adjourned to Friday, the 9th December 1870.

CALCUTTA,
The 2nd December 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

Office Supdt Govt Printing—No. 5114 1 C,—5 12 70—200

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 9th December 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble H. W. Norman, C. B.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble D. Cowie.

The Hon'ble W. Robinson, C. S. I.

The Hon'ble MR. ROBINSON took the oath of allegiance and the oath that he would faithfully discharge the duties of his office.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN introduced the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter, and moved that it be referred to a Select Committee with instructions to report in three months. He feared it would be necessary for him to engage the attention of the Council for some time, as the subject of which this Bill treated was of the first importance. He might begin by stating the occasion of its introduction. In June last the Indian Law Commissioners issued their Seventh Report, which Report related to the revision of the Criminal Procedure Code. They made various recommendations in connection with the revision of that Code and the passing of Act VIII of 1869, by which the Code was extensively amended a year ago; and they concluded their report with these observations:—

"We have endeavoured by this report to complete the revision of the Code of Criminal Procedure in the manner which appears to have been contemplated by the local Government of India.

"We should not have adopted this method of executing the duty entrusted to us, if Act VIII of 1869 had not been passed; but the existing state of the law, as altered by the provisions of that Act, has, in our opinion, rendered this the most expedient course.

"A short Act may be passed, embodying the required provisions on the points regarding which we have reported—

Those were the points which, with certain others, were referred, after the passing of Act VIII of 1869, to the Indian Law Commissioners by the Secretary of State.—

"In that case the original Code XXV of 1861, with the Act VIII of 1869, and such new Act would contain the whole law.

"Should it however, be thought more convenient to consolidate the whole law of procedure in a single Act, this could be effected without difficulty by a process little more than mechanical."

That was the recommendation of the Indian Law Commissioners. MR. STEPHEN'S own attention having previously been drawn to various matters in connection with the Code of Criminal Procedure, he had before the report was issued asked leave to introduce a Bill for the consolidation of the two existing Acts on the subject, namely, Act XXV of 1861 and Act VIII of 1869 as a part of the general consolidation scheme now in progress and not very far from completion. However, when this Report arrived from the Indian Law Commissioners, the importance of taking that course was much increased. He therefore proceeded carefully to examine the Code. On examination he was by no means able to concur in the opinion that a proper consolidation could in this instance be accomplished by a mere mechanical process. The more he examined the Code, the more clearly he became convinced that it was ill-arranged, obscure, and confused, and that it would therefore be of the highest importance to re-arrange it. The Code had been in force since 1861, and he had no doubt that it was a vast improvement on the condition of things existing before that time. Since 1861, it had been amended at various times, and the amending Acts were themselves consolidated into one Act in 1869; and it was now proposed by the Indian Law Commissioners that we should have a further amending Act, for it really made little difference whether a separate Act was passed, or whether the three existing Acts were thrown into one by a merely mechanical process. This would in MR. STEPHEN'S opinion make worse that which was already bad, for the present law was to the last degree confused and ill-drawn. On a careful examination of the Code he arrived at the opinion, that he had very seldom seen a more confused and worse drawn law in his life. That was a strong assertion to make, and he would therefore ask the Council to excuse him if he proceeded to justify it.

The principle on which a Code of Criminal Procedure ought to be arranged was perfectly simple. You would naturally begin at the first steps taken when a crime had been committed or was suspected; you would go on through the various steps from the time when the enquiry was first made till you got to the execution of the sentence of the Court. Exceptional incidents and supplementary arrangements should be separately dealt with. That was the principle on which a Code of Criminal Procedure ought to be framed, and those who compiled the existing Code had arranged the chapters of the Code to a certain extent with reference to this principle; but they had departed from it to a degree which threw the whole matter into confusion.

He would now proceed to show the manner in which the Code had been arranged. In the first place it was thought desirable that the Code should contain provisions relating, not merely to the detection and punishment of crime, but also to its prevention by such processes as the taking of recognizances and security to keep the peace; the taking of security for good behaviour; the taking of measures for the removal of nuisances; the making of orders for the maintenance of wives and children, and the mode of proceeding in cases of disputes relating to the possession of land, or the right of use of any land or water likely to cause a breach of the peace.

He was not prepared to say that these subjects should not form part of a Code of Criminal Procedure, but that was no reason for putting them in the middle of the Code, between the chapters relating to enquiries and trials before Magistrates and the chapter on trials before the Court of Session; so that a student, after following the course of affairs to the committal of the accused for trial, found himself in the midst of provisions regarding local nuisances, the maintenance of wives and children, and other such matters. He had some right to speak with authority on the feelings of students on this matter, for he was one himself. When he accepted his appointment, he naturally wished to instruct himself in the laws in force in this country. When he read the Penal Code, he arrived at a clear notion of what was intended; when he read the Civil Procedure Code, he also obtained a pretty clear notion of its intention; but when he got to the Code of Criminal Procedure, he found himself at a loss to follow the progress of the steps that had to be taken with an offender, and he felt obliged to put off the attempt to understand the Code, until he could obtain oral information about it.

This long parenthesis of five chapters had in itself a certain degree of coherency, though its principle was by no means apparent, but it was followed

by other chapters of which the same could not be said. The chapter after disputes about land was followed by a chapter about juries and assessors. Up to that point, nothing had been said about juries and assessors; they naturally belonged to the subject of trials before Courts of Session. This chapter was followed by one about Subordinate Judges and Principal Sadr Amíns in Madras. Why a chapter on that subject should form the 24th chapter of a Code of Criminal Procedure for all India he could not conceive, and no one had ever been able to tell him. After the chapter relating to trials before the Court of Session came the subject of the finding, judgment and sentence; after that, the natural course would have been to go to the subject of appeals; especially considering how important appeals were in India; but instead, there was printed a chapter on lunatics.

There were other subjects in the Code equally ill-placed. For instance, the third chapter was entitled "Preliminary Rules," and the 31st chapter was entitled "General Rules." There was no sort of distinction between those chapters, and no attempt whatever to arrange either of them. The sections might have been arranged by lot for anything that appeared to the contrary. Thus, the first of the preliminary rules (section 43) provided that complainants and witnesses should be examined upon oath or affirmation according to the law for the time being in force; and the following section (44) authorized the Court to award a portion of a fine in compensation for loss or damage caused. What connection had these two sections? To turn to the "General Rules." Section 431 provided for the employment of interpreters, section 432 gave the accused a right to be defended by Counsel, and section 433 provided for the confinement of youthful offenders in reformatories.

He would, however, give one or two instances to show that not only were the chapters themselves ill-arranged, but that the arrangement of the sections was still more confusing. He would ask any one who knew nothing about the matter by expèrience or conversation to attempt to derive from the Code a clear notion of the law which prevailed with regard to trial by juries and the functions of assessors. The subject was treated of in chapter 23, and the sections were arranged in the following remarkable manner. First, there were sections which provided for trial by jury generally; then sections settling the composition of juries when Europeans or Americans were tried; then sections as to the number of which a jury is to consist, and other sections as to the number of voices required for a verdict; after that followed provisions about jury-lists and the attendance of jurors. Then you went back to the trial, then you went back to a still earlier stage, namely, the summoning of jurors; and then after

an interval of about 23 sections, you came back to the subject of the majority of votes. He had to read that chapter three or four times, and to make an index to it, before he got any notion of the law on the subject.

When an attempt had been made to follow the natural order of the subject, it had been thought necessary to put the most complicated proceedings first, and the simpler proceedings afterwards. Thus, the chapters relating to inquiries before Magistrates were put together; the most complicated of these was inquiry with a view to commitment to the Court of Session, and the simplest was the procedure in cases tried upon summons. The chapter relating to commitments came first, the chapter relating to summons cases came last; one result was a good deal of needless repetition and continual cross references. For instance, in the chapter about commitments were provisions as to the mode in which the attendance of witnesses was to be secured. They were embodied in the chapter on summons cases in the following awkward words—"Section 264. The provisions of sections 187, 188, 189, 190, 191 and 192 of this Act shall be applicable to witnesses summoned according to the provisions of sections 262 and 263." Nothing could be more vexatious or irritating to a Magistrate or to a student than the necessity thus created for constant reference from one part of the Code to another.

These were mere illustrations, but they were quite enough to show how ill the Code was arranged. Their number might be considerably increased if necessary.

Mr Stephen was quite aware of the gravity of his proposal to re-arrange the Code. When a person had studied and understood one arrangement, it would be by no means pleasant to him to have to learn another. At the same time he felt that these Codes were not to be considered merely with reference to the convenience of those who were now administering their provisions, nor to the transaction of current business. They must also be considered from an educational point of view. They were the great standard enactments by which a knowledge of the law was to be acquired by those who had to administer it, and who ought to be able to learn their duties with as little trouble as possible. If clearly arranged and capable of being grasped as a whole, they might be made to serve as a great means of economising time. The necessity of a good plan on this subject was indeed so obvious that he did not think some degree of inconvenience to which the present administrators of the law might be put ought to be regarded as an objection to the proposed measure.

He would now say a few words of the system on which the Bill was re-arranged, and which at once shortened the Code by about eleven sections. The Bill was divided into two principal parts, that which related to the detection and punishment of crime, and that which related to the prevention of crime. First, as to the detection of crime. The Bill dealt with the subject in the following order: jurisdiction; process to compel appearance; inquiries by the police; enquiries before the Magistrate and trials before the Court of Session; appeal, reference, and revision; the execution of the judgments of the Court. This disposed of the ordinary process in criminal trials, from the first enquiry into the matter down to the final order of the Court and the carrying out of that order. Next came matters to be separately treated. The most important of these was evidence, which was dealt with in Part VI of the Bill, instead of being as at present scattered all about the Code; then came general provisions regarding the taking of bail, the appointment of juries and assessors, and the provisions regarding lunatics and contempts of Court, which were exceptional cases. Next came what in England is called criminal pleading, the charge and so forth. This would complete the proceedings for the detection and punishment of crime. The Bill then proceeded to define the preventive jurisdiction of Magistrates, as to recognizances and securities, the removal of nuisances, making orders for the maintenance of wives and children, and for the prevention of breaches of the peace arising out of disputes regarding the possession and use of land and water. The Code would conclude with no more than three miscellaneous sections.

The Bill would be published in the Gazette, and His Lordship and the Council would then have an opportunity of seeing how the work had been carried out.

There was only one other matter connected with this subject which he wished to mention; it related to the question of jurisdiction. He was not quite sure that it would not be better to have a separate Bill devoted to the subject of jurisdiction in Criminal Courts throughout the Mofussil, leaving the subject of procedure to stand by itself. As it was at present, there were a good many provisions relating to the power of Courts to try offences, such as those relating to the subordinate judges in Bombay and Madras and some others. It might perhaps be possible to put all these together into a separate Act. He wished to point out, moreover, that in the Code as now drawn, and as it would be published, there really were hardly any substantial alterations from the existing Code. The Bill was simply the Code of Criminal Procedure as it now stood, arranged in the order of subjects, and with such drafting alterations as were incidental to that arrangement.

He might, however, mention three alterations. There was, first, that which related to the jurisdiction which Justices of the Peace in the Mofussil at present exercised over European British subjects. That jurisdiction depended at present on the statute 53 Geo. III, chap. 155, and was wide, though ill-defined, and more or less connected with certain technicalities of the English criminal law. He proposed that the jurisdiction should extend to cases usually disposed of before Magistrates upon summons. This alteration was rather in name than in substance.

The second alteration related to the manner of finally disposing of cases in which European British subjects were concerned. In these days especially, when European British subjects who were not very favourable specimens of their race were wandering about the country, he thought it would be desirable that if a European British subject were brought before a sessions judge, the sessions judge should be able to dispose of the case if the accused did not claim his right to be tried before one of the High Courts. MR. STEPHEN therefore proposed to empower sessions judges to dispose of such cases, unless the European British subject insisted on his right to be tried by the High Court.

The third and last alteration was with regard to trial by juries, the provisions regarding which appeared to be complicated. There were certain specified majorities which might convict a man of an offence; if a smaller majority wished to convict, the prisoner might be tried again. The Indian Law Commissioners observed, that this was an extremely intricate way of proceeding, and that the concurrence of the judge was a far better guarantee of the justness of the conviction than any specified majority of jurors; and the Bill was altered accordingly thus:—that if not less than two-thirds of the jury convicted a man, and if the judge agreed with them, the accused was to be convicted; if there was not such a majority, or if the judge did not agree with them, the accused would be acquitted.

Act I of 1849 had been consolidated with the Code under the head of jurisdiction, and part of the Whipping Act under the head of execution, and some other minor alterations had been made which had been thought desirable.

That was the state of the draft as it stood. But he proposed to make some observations on possible alterations or improvements of the general system of criminal procedure; alterations which he did not venture to recommend on his own authority, but which he threw out as suggestions, in order that Government might receive the views of those who were accustomed to the administration of the general system of criminal procedure.

In the first place, it occurred to him that there were many parts of the Code which might with advantage be condensed or simplified. He had observed in a great number of Indian Acts, and in the Code of Criminal Procedure more than in any other, that much difficulty had been found in drawing the line between legislative and executive functions. The consequence was that a large number of provisions found their way into the law, which, he thought, could be better dealt with by the executive Government from time to time as occasion required. He would give a single instance of this unnecessary legislation. There was a chapter in the Code about preliminary investigations by the police. That chapter, as it stood in the revised Draft Code, contained twenty-seven sections, and after reading it through and carefully criticizing it, it appeared to him (MR. STEPHEN) that those twenty-seven sections might be reduced to eight or nine, if nothing was kept except the provisions for which some positive law was required. The rest fell under one or other of these three heads: some authorized the police to do things for which no legislative authority was necessary; for instance, to question people about a crime and to make memoranda of their answers for their own use: others prohibited things prohibited and punishable under the Penal Code; for instance, using unnecessary restraint, although the Penal Code made that a crime and subjected it to a severe punishment: others required the police to do things (without any penalty for non-compliance) which the executive Government might very well do at their own discretion, by an executive order; for instance, the police were required to keep certain diaries and reports and forward them to the proper officers at certain times. These diaries and reports might very probably be necessary. But no law was wanted to ensure their being kept. The police authorities had simply to tell their men that they were to do these things, and that if they did not, they would be turned away or their pay would be stopped. To turn such provisions into positive law was to ensure endless litigation about their non-fulfilment. That particular section with regard to diaries had given rise, he was afraid to say, to how many decisions of the High Courts, and to elaborate discussions among the executive authorities as to the legality of a course taken upon the subject by one of the Local Governments. If the matter had been left to be regulated as a question of administration, all difficulty would have been avoided.

Another matter was this. There were certain parts of the Code which appeared to him to repeat without necessity the various technicalities of the English law, as to the district in which an offender should be tried. It was altogether too long a story to tell how the English law on this subject came to

be as intricate as it was. The whole of those provisions might be replaced by a simple provision to the effect that the offence was to be tried in the district in which the crime was committed, unless there was some reason to the contrary, such as the convenience of witnesses. Some section of that kind would save about ten sections of the Code. Then there were provisions relating to criminal pleading, pointing out the way in which charges were to be framed, and dealing as the English law dealt with the case of a man tried for one offence and proved to have committed another. The English law upon such subjects was in a strange state. It might be said to consist of rigid technicalities modified by sweeping exceptions.

MR. STEPHEN thought that it had been too closely followed in the Code of Criminal Procedure, and that nothing was really required beyond provisions which would secure to a man such notice of the nature of the charge against him as would enable him to make a full defence to it, and would form a memorandum of the trial when it was over. It appeared to MR. STEPHEN that there need be no great difficulty in providing for this in a short and simple manner.

The Bill contained a number of provisions relating to evidence. He thought they might certainly go out of it as they would find a place in the general law of evidence which was under consideration. In short, it was his impression that, if the Code were carefully examined from end to end with a view to the suppression of all extraneous matter, it might certainly be shortened by some sixty or seventy sections, and possibly by many more. So much with regard to improvements in the Bill as it stood. He now came to consider the substance of the present system.

There was a great danger in attempting to undertake too much in regard to a matter of this kind, and he would be the last to suggest it. We had a system of criminal procedure such as it was. He did not know that it worked badly. It was understood, and no doubt we had to struggle with very great difficulties indeed in a country where it is necessary to administer justice by foreigners in a foreign language, and amongst a people who certainly did not give very great facilities for collecting trustworthy evidence, and also where the safe-guards of the public Press and public discussion hardly existed at all. Under these circumstances it was impossible not to feel that any system which could be devised by the wit of man must yield results which could not be considered absolutely satisfactory. Therefore, any system which had been found to work reasonably well, ought to be criticised with great respect, especially by a person situated as he (MR. STEPHEN) was. He mentioned this by way of preface to some

remarks which he thought it desirable to make on the general features of the system, which he put forward in the hope that those who were acquainted with its working might see how the system struck a man educated under the English law, and might explain and justify matters which to such a man appeared questionable. He wished to throw out these suggestions in the hope that, while the Bill was under consideration, information might be furnished for the consideration of the Committee on the Bill.

The first matter to which he had to refer was this. The cardinal point of the whole system was the law of appeal. The whole system was based on the principle that the great safe-guard for the proper administration of the law was that the superior Courts should keep in order the Courts below by revising their judgments. Several remarks suggested themselves on that practice. One was that the system devised was very intricate. There were no less than three kinds of appeals. The first was the appeal proper, which lay in the cases specified in the Code; then, the process of reference in cases of capital sentence; and thirdly, the more general process of revision, which included the general supervision exercised by Court over Court, each in its degree, and by the High Courts over all the rest. The intricacy of such an arrangement was objectionable if it could be avoided. Where there were three ways of doing a thing they were sure to interfere with each other. For instance, a regular appeal was both on the facts and on the law of a case. But revision was a process which applied to law only; and he must confess that the inclination of his mind, judging from English experience, would be that this distinction between fact and law would be sure to produce great intricacy and not a little injustice. He could imagine many cases in which the Court of revision might see that the law was right, though the facts had been wrongly found, and in which they would thus be obliged to pass by an injustice without supplying any remedy for it.

There was another point connected with appeals. If an appeal was admitted absolutely at the option of the defeated party, the Court of first instance became a mere instrument for collecting evidence for the opinion of the Court above. The judgment of the Court of first instance in such cases was binding only if both parties acquiesced in it. Otherwise not. Surely this was a mistake. If a man was not fit to decide a case, he should not be allowed to try it. But if we allowed him to try the case, his judgment ought to be allowed weight, and people should not be allowed to appeal from it without showing in the first instance some ground for supposing that he was wrong. There was another difficulty in this matter. He had heard it said by a person well acquainted with this procedure, that the effect of the system

was that, though a man was put on his trial three times, he was never tried at all. That was rather a caricature upon the system, but still there was something in it which required attention. When the accused was before the Magistrate, the Magistrate enquired into all the circumstances of the case; he saw the witnesses and heard what they had to say, and recorded the evidence. He finally committed the man for trial before the Court of Session. He had thus a good opportunity to form an opinion on the guilt or innocence of the prisoner; but his province in the matter was simply to say whether he thought the man should be put upon his trial. This might be called the first trial. Then the Sessions Judge tried the case, with the knowledge that the Magistrate thought the man guilty, and with no better—perhaps with a worse—opportunity than the Magistrate of forming a sound opinion. The Sessions Judge passed sentence, and this might be regarded as the second trial. But his sentence was not final. The accused appealed to the High Court. The High Court pronounced a final judgment, but that judgment proceeded entirely on hearsay evidence—on some one else's report of what the witnesses had said. This was the third trial. The result was that the man who had the best opportunity of forming an opinion on the matter pronounced no sentence at all; that the Court which first pronounced sentence tried the case, not when it was fresh, but after a very rigorous examination by a Magistrate had coloured all the proceedings, and that the Court which pronounced the final sentence, had the worst opportunity of the three for forming an opinion. Moreover, each Court was dependent to a certain extent upon the Court below, not only for evidence, but for an estimate of the way in which the evidence was given, for both the Magistrate and the Sessions Judge had to record any remarks which they thought material as to the manner, &c., of the witness; so that the High Court decided the case finally upon reports of evidence which they did not hear, and accounts of demeanour which they did not see, and that, although they were constantly protesting against hearsay evidence. A case lately came to his notice officially in which the Magistrate recorded his opinion, that a particular witness knew a great deal more than he chose to tell. From the peculiar circumstances of the case Mr. Stephen entirely agreed with the Magistrate. But, when that deposition, with that remark, went before the Sessions Judge, was he likely to hear that man's evidence in an entirely unbiased spirit? Was the High Court likely to do full justice to that evidence? The result of the whole system was that no one ever had before him the real merits of the case, being at the same time under the responsibility of deciding what the judgment ought to be. Unless we got those two things together, we could not get a sound and unbiased judgment. Of those three tribunals, impressing one another with their opinions, it seemed to Mr. Stephen that it might be said

that the man was really tried by no one of them, but by all three together in confusion. That might be right; it might be the best way to struggle with the difficulties that were to be overcome. But he should have thought that a far simpler and more solid form of trial might have been devised if the attempt had been made. It seemed to him that the great object was to get a really good trial as soon as ever you could, because if you had a rotten foundation to stand upon, he (MR. STEPHEN) did not see how you could ever arrive at a satisfactory final result. If it were the duty of the Magistrate to take down the evidence, to see the spot on which the crime was committed, to look in short into the whole matter when it was fresh; and the opinion he formed was wrong, he did not see how it was possible for any Court of appeal ever to set it right. He would wish to strengthen in every possible way the first Court which dealt with the transaction; to have as good an enquiry as the nature of the case would permit; to let that be the basis of the whole transaction, and let it be distinctly understood that in most cases that investigation would be final.

He was quite aware of the difficulties connected with this, and that there were many things which would have to be considered, but that object ought to be kept in view. The trial by the man who saw and heard the witnesses and went to the spot ought to be the really important matter. He (MR. STEPHEN) was quite aware at the same time that in this country you must have control; you must have the power to set to rights errors of judgment, or of over-zeal or of too little zeal. He recognized that as fully as anybody, but he thought that that control ought to be made as direct, as simple, and as stringent as it possibly could be. It ought not to be fettered by distinctions between fact and law, and it ought, he thought, to apply to acquittals as well as convictions. He would not give a man a positive right to appeal in any case, but he would let him show that there was a probability that the judgment against him was wrong. He would make the lower Courts as good as possible, so that the presumption would be that the conviction was right; but he would not let there be an appeal of right. If the question was to be re-opened, first let the man interested show that the question ought to be re-opened. When you had decided that, MR. STEPHEN would give the superior Court power to do full and complete justice between the parties.

As the matter stood at present, there were all sorts of restrictions. He would adduce one. Although the prisoner might appeal, the Crown could not appeal. Frequent attempts had been made to establish a system of criminal appeal in England. One argument against it had always been that, if there was an appeal at all, there ought to be an appeal on both sides, and so strongly had that been felt that it had been one of the principal reasons why no appeal at all was allowed, except in a most

anomalous shape in England. In point of fact the Secretary of State for the Home Department was a Court of Appeal; a very bad one in some respects, and a good one in others. He was a bad Court of appeal for reasons which MR. STEPHEN did not think it necessary to explain, but if he exercised his function of recommending a pardon in a different way, as proposed by Lord Penzance in a Bill introduced into the House of Lords' last Session, he would be as good a Court of Criminal Appeal as we could have. The arrangement proposed by Lord Penzance was, that the Secretary of State and a judge who tried the case should have power, if cause were shewn, to go into the whole of any case tried, and either to direct that it be tried again, or to vary or quash the sentence, or to do whatever might be necessary in order to remedy any mistake which they had cause to suspect. We had an opportunity of introducing a system of that kind into this country by throwing the processes of appeal and revision into one. If you empowered a superior Court, should cause be shown why the matter should be re-opened, to re-open the matter on both sides, you would have all that was now done in a very irregular way by the Secretary of State and something more; and he (MR. STEPHEN) should be very glad to receive suggestions from those more acquainted with the existing system than he was, whether such a plan could be adopted in this country. That might possibly raise the question as to the executive control which the High Courts at present exercised over the subordinate Courts. About that executive control much might be said if necessary; he would throw out as a suggestion that it should be separated from the judicial functions of the Court, but the subject was one which he could not at that time discuss fully.

Another subject to which he wished to refer was the subject of trial by jury. He should be very glad to be informed as to the degree of success which so remarkable an experiment had obtained. There were certainly some considerations which had led him to suspect that the institution of trial by jury was not adapted to this country, and it would be very desirable to know what experience had to say about the success of the experiment. Many points in the present system were singular. It was unhappily notorious that oral testimony in this country was of little value. You could place little confidence in the veracity of witnesses. Why then did you place so much confidence in the impartiality of jurors of the very same class, from whom you did not even take the security of an oath, whatever that might be worth? Why in particular put more confidence in the verdict of such a jury than in the opinion of a Magistrate or Sessions Judge? An appeal lay from their decisions, but from the verdict of a jury, however monstrous the conviction or acquittal might be,

there was no appeal. The experiment might have succeeded, and it might be quite right; but all that he (MR. STEPHEN) could say was that it was extraordinary.

Another circumstance seemed very remarkable. Whenever you had trial by jury, the goodness or badness of the verdict must depend on the summing up of the judge. Now, he greatly doubted whether many of the Sessions Judges were qualified to sum up in a Native language. Hardly any of them had had any practice at all in public speaking, and however well a man might know a foreign language for common purposes, it was quite another thing to sum up in it; upon, it might be, numerous and intricate facts. He (MR. STEPHEN) had heard thousands of summings up by Judges of all sorts, professional and unprofessional. Nothing could be more difficult than to sum up at all well in one's own language, and he did not believe that any one could do it who was not very much accustomed to public speaking. To sum up well or even intelligibly in a foreign language appeared to him difficult in the extreme, not to say impossible. Even this, however, was not all. The Sessions Judge had to record his summing up and to transmit it to the High Court. Of course he could not both speak and write at once. He must therefore write it out from memory. Could there be any moral doubt that he would record neither what he actually did say, nor what the jury supposed him to have said, but what he meant to say, which might and probably would be quite a different thing? As the whole success of trial by jury depended upon the summing up of the Judge, if that security were wanting, all that he could say was, that the system of trial by jury in this country must be in a very singular state. MR. STEPHEN did not presume to pass an opinion on such a subject; but it was very well worth consideration, and it would be desirable to have some information of the degree of success which had attended the system.

He had now gone through the main points which he wished to be considered. He wished to state, in conclusion, that he made these observations, not as indicating any policy of the Government, but as the personal criticism of one who had paid considerable attention to the subject of the administration of criminal justice; and he made them in order that the Committee might receive information from persons competent to give it, and that the questions raised might be considered with the attention that their great importance deserved.

The Motion was put and agreed to.

PAPER CURRENCY BILL.

The Hon'ble SIR RICHARD TEMPLE introduced the Bill to consolidate the law relating to the Government Paper Currency, and moved that it be referred to a Select Committee with instructions to report in a month.

The Hon'ble MR. BULLEN SMITH said that there were one or two remarks with reference to this Bill which he had intended to bring forward in the Committee, on which he had no doubt he would have the honour to serve. But it had been suggested to him, since coming into the room, that, as the points in question were important, it would be more in accordance with the custom of the Council that they should be brought forward at this stage of the proceedings: he would, therefore, beg leave to make a few remarks on the subject, although he was not prepared as he should wish to be in submitting anything for the consideration of the Council.

The first point to which he would advert was that this Bill would cause a good deal of disappointment out-of-doors, if amendments were not made in sections six and seven. He meant that the time had now come when some very considerable modifications might be made in the number and extent of the circles of issue, which had been fixed at their present limits ten years ago, if indeed they might not be altogether abolished. At that time the paper currency was new and tentative: the only paper currency previously known was the currency of the Presidency Banks, which was small and confined to restricted limits. When Mr. Laing introduced the paper currency, he said that we should proceed very cautiously, and the chief reason for the constitution of so many circles of issue was the position of the country as regards the facilities for transmitting bullion. It was felt that the inability to send bullion speedily to any particular place in which there might be a run on the treasury might be attended with very great inconvenience. Without wishing in any degree to undervalue the opinions of those who spoke on this subject with authority, it seemed to him that the same causes which produced a run on any one treasury, would imply mistrust of the Government which would extend to every other treasury in the country, and therefore a run would not be confined to any one place. Admitting, however, the danger of a run on one treasury as possible, he thought that sufficient reason could now be found for greatly modifying the existing provision regarding circles of issue. He thought that, with a line of railway extending from Calcutta to Lahore, it was only reasonable to think that the Government was in a position to meet speedily any unforeseen demand at any one of the places of issue, and that the great inconvenience felt by the currency not being convertible at any place other than the place of issue, might be removed. It did seem now unreasonable that a traveller carrying notes of the Government of India from Calcutta should find himself twenty-four hours after in a district where he could not insist on those notes being cashed, and that he could only obtain change as a favour or by paying a discount. He trusted, therefore, that in Committee the sections affecting circles

of issue would be so modified as to give to the Government currency note a much wider area in which it should be payable.

The second point to which he wished to refer was still more important. It was whether the time had not come when the Government of India might give the public the great advantage which would result to them, and themselves take the legitimate profit which would accrue, by reducing the minimum size of the note below the point of rupees ten at which it now stood. He had read over very carefully all that was said in this Council on this subject in 1861, and he found that there was a very considerable difference of opinion on the subject; but that, on the whole, the balance of opinion was in favour of a smaller note than that now in force. His Excellency the present Commander-in-Chief, and Sir Bartle Frere, late Governor of Bombay, held that a note of five rupees ought to be the minimum; and both of those officers knew the country so well that he thought their opinion ought to be of great weight. There were others also who were in favour of the five-rupee note, but who did not press their opposition, because Mr. Laing held out hopes that the Government would at no distant date be in a position to give a gold currency which would, in some measure, obviate the inconvenience which was undoubtedly felt by the absence of any note of smaller value than rupees ten.

Mr. Bullen Smith did not at all mean to say that the paper currency as it now stood had not been successful. On the contrary, the Chief Commissioner of Currency lately issued a table, which he had no doubt most Hon'ble Members had seen, showing to what extent the paper currency was used in daily transactions at the presidencies, by the local banks, by members of the Chamber of Commerce, and by the Trades' Association. If his memory served him rightly, this was something like thirty-six per cent of the whole monetary transactions of the parties in question. That could not be considered otherwise than satisfactory, as we were only in the tenth year of the Act. But he (Mr. Bullen Smith) believed that even in such a return, the existence of five-rupee notes would very materially raise that average, especially as regards the daily transactions of the members of the different Trades' Associations. But if we came to consider whether we had got the currency in circulation among the people, whether it had really taken hold of the country generally, it seemed clear that we must admit that in this respect it was almost a total failure. Speaking from his own experience, and information derived, he found that the currency notes sent out of the presidency went up chiefly for the purpose of paying rent and such like purposes: they were paid away at once by planters and others either directly to the Collector, or to the zamíndár, who paid them

to the Collector on account of revenue, and there the so-called circulation ended. There was no circulation in the sense of percolating through the country, and entering into the daily transactions of the mass of the people. On the contrary, one might go through the length and breadth of Bengal, without scarcely seeing such a thing as a currency note, even in important háts and places of trade. Other Hon'ble Members could say whether this was true also of other districts; but he had been told that, within ten miles of Lahore, a respectable inhabitant of a village did not know what a currency note was, on its being shown to him, and said he thought it was a parwána. With such facts as these he did not think that we ought to rest satisfied. If we had a smaller note, which would be more within the available means of the people, more proportionate to the sums of money they were accustomed to deal with, it would be an advantage to the people and a profit to the State. His idea of what real circulation was, or ought to be, was to be found in Scotland, where the great bulk of the people positively preferred the one-pound note to the sovereign simply because they were more accustomed to it. The one-pound note of Scotland much more nearly represented the weekly earnings of the lower classes of the people in that country, than did a ten-rupee note the monthly incomings of the bulk of the population here, and he believed that, had there been in Scotland such a disproportion between the lowest currency note and the means of the people as we found in this country, a circulation so successful would not have been attained. He did not in the least entertain the opinion, or wish to represent, that there was no difficulty in lowering the value of the note; he was fully alive to the responsibility of making any change; but from all he could learn he thought that, on the whole, the proposed change was desirable, and that the five-rupee note would prove to be an advantage to the people and a benefit to the State.

The Hon'ble MR. COWIE said that he wished to endorse the opinion of the Hon'ble Mr. Bullen Smith with regard to the advisability of issuing notes of a lower denomination than those now in circulation. He believed that they would gradually prove of very great advantage to the public as well as to the Government.

The Hon'ble SIR RICHARD TEMPLE said that as this was merely a consolidation Bill, he did not come into the Council prepared to enter into the consideration of the points that had been adverted to. But as the Hon'ble Mr. Bullen Smith had made these valuable observations, SIR RICHARD TEMPLE hoped he might be permitted very briefly to advert to them.

The two points noticed by the Hon'ble Mr. Bullen Smith, and the one point in corroboration by the Hon'ble Mr. Cowie, had been for the past two years occu-

pying his (SIR RICHARD TEMPLE's) attention. Personally his own opinion had always coincided with the views that had been set forward. If he could have had his own way, he believed that the suggestion which the Hon'ble Mr. Bullen Smith had so justly made would long ago have been carried out. But as His Lordship in Council was aware, in these matters, a great number of authorities had to be consulted in a great variety of provinces, and though there might be unanimity amongst the Hon'ble Members of the Legislative Council, there was not that unanimity everywhere, and that was the sole reason why full effect had not already been given to the measures indicated. These two very points were under the immediate consideration of the Financial Department, and it was his intention to bring forward, in another branch of the Government, propositions to the effect of that which the Hon'ble Mr. Bullen Smith desired. He (SIR RICHARD TEMPLE) would wish, not perhaps exactly what is commonly called the "universal note," that is a note of which payment could be demanded by law at every treasury in India, but a note of which payment could be demanded at the principal public treasuries of each Presidency; for instance, a note of the Calcutta circle, the holder of which could cash it at the principal treasuries throughout the Bengal Presidency. There was nothing in the law to prevent us from arranging that.

The other point referred to by the Hon'ble Mr. Bullen Smith was perhaps a more difficult one, namely, whether we should lower the minimum denomination of the notes. SIR RICHARD TEMPLE's own opinion had been, for the last two years and more, that we should have a note of a smaller denomination than ten rupees, that is, a note of five rupees; and it was possible that before the Bill passed through Committee he might be able to submit some proposition to this effect. That being the case, he was extremely glad to hear the opinions expressed by such competent judges as the Hon'ble Mr. Bullen Smith and the Hon'ble Mr. Cowie. Whether or not their anticipations would be fulfilled he could not say;—namely, that the issue of these notes would cause the circulation of the Paper Currency to expand. He was sorry to be obliged to corroborate what had been said as to our circulation, though highly successful in the presidency towns, not being equally successful in the interior of the country. He had now under preparation a Resolution in the Financial Department, directed to the several Local Governments, calling their attention to the fact that the circulation in what were called Mofussil circles did not evince the vitality which we desired. Possibly the issue of five-rupee notes might cause an improvement; but he was not sure, because if a ten-rupee note was beyond the means of the mass of the population, a five-rupee note was also beyond their means. Then, could we issue notes of a lower denomination than five rupees? He believed not. Still the issue of a five-rupee note was an experiment that ought to be

made, and the proof of the experiment would consist in this, as to whether the people applied for those notes or not. If they did, he presumed that it would be desirable to meet the want.

There was one more observation which he wished to make. He understood the Hon'ble Mr. Bullen Smith to make some allusion to the prospect of our issuing a gold currency, which had in a manner been promised by Mr. Laing. As the Council were aware, there was no gold coin in India which was a legal tender. Nevertheless, for the last twenty-five years, there had been going on a coinage of gold pieces of the value of fifteen rupees; but until quite recently it had not been in the power of the Government of India, to issue gold coins of the value of ten or five rupees, for the simple reason that we had not got the mechanical means for coining them. It took a long time to get out machinery from England. It had taken a year and a half to get dies and other necessaries for coining these pieces. The Mint Master now reported, however, that he had got all that he required, and would be able to supply gold coins of those denominations; that was to say, whenever merchants or others sent their bullion for coinage, they might receive in return gold pieces of the value of ten and five rupees.

The Motion was put and agreed to.

EMIGRATION OF NATIVE LABOURERS' BILL.

The Hon'ble Mr. Chapman moved for leave to introduce a Bill to consolidate the law relating to the Emigration of Native Labourers. He said that the law relating to Emigration was now scattered over five Acts. The proposed Bill would be a further step towards the completion of the general work of consolidation now in progress. With the exception of some improvements in arrangement and wording, the existing law remained unaltered. The Bill would be referred to the Local Governments and the Protectors of Emigrants at the several presidency towns, and other authorities acquainted with the subject. Any suggestions they might have to make for improving the substance of the law would be duly considered by the Committee.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble Mr. Stephen moved that the Hon'ble Mr. Robinson be added to the Select Committees on the following Bills:—

To define and amend the Law of Evidence:

To amend the Law of Insolvency:

For the Limitation of Suits.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. COCKERELL moved that the Hon'ble Mr. Robinson be added to the Select Committees on the following Bills:—

To consolidate and amend the law relating to the local extent of the general Regulations and Acts and to the local limits of the jurisdictions of the High Courts and the Chief Controlling Revenue Authorities:

To consolidate and amend the law relating to the District Munsífs in the Presidency of Fort St. George:

To consolidate the law relating to Cattle Trespass:

For the Registration of Assurances.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved that the Hon'ble Mr. Cowie be added to the Select Committee on the Bill for the Registration of Assurances.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter—The Hon'ble Messrs. Cockerell, Inglis and Robinson and the Mover.

On the Bill to consolidate the law relating to the Government Paper Currency—The Hon'ble Messrs. Stephen, Bullen Smith, Cockerell and Cowie and the Mover.

The Council adjourned to Friday, the 16th December 1870.

CALCUTTA,
The 9th December 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

Office Supdt Govt. Printing—No 5284 L. C.—16-12-70.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 16th December 1870.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble B. H. Ellis.

Major General the Hon'ble H. W. Norman, C. B.

Colonel the Hon'ble R. Strachey.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble D. Cowie.

The Hon'ble W. Robinson, C. S. I.

COMMITMENTS FROM ANDAMANS BILL.

The Hon'ble MR. CHAPMAN said that, with reference to the first motion which stood in his name, he had to move that, in section 1 of the Bill to authorize the committal of European British subjects by Courts in the Andamans to the High Court at Fort William, the words "(other than an offence punishable with death under the Indian Penal Code)" be omitted. This suggestion had been made by the learned Chief Justice of the High Court, to whom the Bill had been referred for consideration.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN moved that the Bill as amended be passed.

The Motion was put and agreed to.

EMIGRATION BILL.

The Hon'ble MR. CHAPMAN also introduced the Bill to consolidate the law relating to the Emigration of Native labourers, and moved that it be referred

to a Select Committee with instructions to report in six weeks. He said that this Bill, as he had before observed, merely consolidated and re-enacted, with sundry improvements in wording and arrangement, the existing law, which was now contained in no less than five Acts.

The Motion was put and agreed to.

ARMS BILL.

The Hon'ble MR. ROBINSON moved for leave to introduce a Bill to consolidate the law relating to the manufacture, importation and sale of Arms and Ammunition, and the right to keep and use the same. He said that this Bill proposed to gather the law relating to arms and ammunition in India, now contained in three Acts, into one enactment. The new measure would re-enact the existing law without any alteration of its policy or principles or executive details. The Bill would be referred for early report to the local governments and administrations.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to consolidate the law relating to the Emigration of Native Labourers—The Hon'ble Messrs. Stephen, Cockerell, Inglis, Cowie and Robinson and the mover.

The Council adjourned to Friday the 30th December 1870.

CALCUTTA,
The 16th December 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

Office Supdt Govt Printing,—No 5572 L. C —19-12-70 —200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 30th December 1870.

PRESENT.

His Excellency the Viceroy and Governor General of India, K. P., G. M. S. I., *presiding.*

The Hon'ble John Strachey.

The Hon'ble J. Fitzjames Stephen, Q. C.

Major General the Hon'ble H. W. Norman, C. B.

Colonel the Hon'ble R. Strachey.

The Hon'ble F. R. Cockerell.

The Hon'ble J. F. D. Inglis.

The Hon'ble D. Cowie.

The Hon'ble W. Robinson, C. S. I.

LAND IMPROVEMENT BILL.

The Hon'ble MR. STRACHEY moved for leave to introduce a Bill to consolidate and amend the law relating to advances of money by the Government for the improvement of land. He said that a system of advances of this description, under the name of takkáví, had been in force in many parts of India almost from the commencement of our rule, and there were in several old Regulations passed at the end of the last century and the beginning of this, some seventy or eighty years ago, many provisions bearing on the subject. These old laws authorized, under certain conditions, the advancing of Government money for agricultural improvement, and in some parts of India the system had been acted upon to a very considerable extent. The security on which these loans were made was complete, because the security was the land itself on which the improvements were carried out, and the advances were declared by law to be recoverable by the same processes as were applicable to the recovery of arrears of land-revenue. The provisions of these old Regulations had, however, been found to be very incomplete, and, as might have been expected, they were hardly suitable in many respects to the circumstances of the present times, and besides, it was thought very desirable to consolidate the whole law on the subject. This would be a further step towards the carrying out of the great scheme of the consolidation of the

statutes of this country which his hon'ble and learned friend Mr. Stephen had in progress.

The Government believed that the principle of giving the assistance of the State to private persons for the purpose of carrying out works of permanent agricultural improvement was one that might with great advantage receive a much wider and more systematic development than had hitherto been given to it. The works for which these advances would be made were not at all great works requiring engineering skill, but works of improvement within the capacity of the proprietors and occupiers of the land themselves, with such little help from the authorities as might be necessary. These works would be for the most part such works as wells and small drainage-works, the reclamation of waste land, and so forth. There was another class of works at the present time for which advances of this kind might be made with special benefit, and for this class of works, through imperfections in the existing law, to which he need not now more particularly allude, advances had hardly been made at all. Northern India was being gradually covered with a system of great canals for irrigation; but the State could only construct the main channels for these works. All subsidiary works, such as the smaller channels for bringing water into the fields and the preparation of the land for irrigation, must be done by the people themselves, by the local proprietors and occupiers of land. Although these subsidiary works required really little skill, and were for the most part inexpensive, still the cost of them was often greater than the small proprietors and cultivators in possession of the land were able to bear without difficulty; and the necessity of incurring this expenditure had been found very often to be a serious obstacle in the way of obtaining full advantage from the irrigation-canals constructed by the Government. Without these subsidiary works of which he had spoken, it was impossible that full benefit could be derived from the canals. It rested with the occupiers of the land themselves to take water or not as they pleased; and the result of the present state of things was that there was frequently extreme delay, after the main channels were made, in taking the water. Thus there was delay in protecting the country against famine, and obtaining for the country the vast accession of wealth and prosperity which was offered to it, and at the same time, necessarily, delay in obtaining for the Government an adequate return on the vast sums of money that it had expended. The Government believed that there could be no object to which portions of the loans which it was proposed to raise for reproductive works could be more advantageously and properly devoted than this; and in making loans for works of this kind there could be absolutely no risk, for the loans would be given on the security of the land itself, and under a system

already known to the people and highly appreciated by them. In a very few years all advances of this kind would be repaid, without the slightest doubt, with interest; nor would any elaborate or expensive machinery be required for the carrying out of this system under any development we were likely to see given to it. He believed there could be no doubt that the existing revenue and other public establishments would be quite sufficient to do every thing which was likely to be required.

He need not now enter into the details of the measure he proposed to introduce. A more fitting opportunity for doing so would be found on the introduction of the Bill, if the Council would give him leave to proceed with the measure. Provisions would of course be required in detail, to regulate the purposes for which these advances of money might be made, and for defining the conditions under which advances should be given and under which they would be repayable, and, in cases of failure in repayment, for defining the manner in which the money should be recovered. The Local Governments were all consulted regarding this measure in a letter which was published in the *Gazette of India* some six months ago. Answers had been received from all the Local Governments in the North of India; and although many suggestions had been made, many of which were very valuable, and would require careful consideration in detail, he might say generally that the proposed measure had been generally approved by all the authorities consulted.

This system, which had long been in force in India, though in a very undeveloped form, was identical in principle with that which had been carried out on a large scale in many parts of the United Kingdon under the Land Improvement Acts, with results which were most encouraging, and the nature of which were well known to His Excellency the President, and to which he need not refer more particularly. He thought it might be safely said that there was perhaps no country in the world to which a system of this kind was more properly applicable than India; for in India at the present time there was one great industry, and one only—the agricultural industry. The one great source of wealth in India was the land. It might be safely said that the whole present and future prosperity of this country, and he might add the future financial position of our Empire in India, depended on the development of the vast and practically unlimited, though too often neglected, agricultural resources of the country. If advantage were taken of the means which science and wealth had placed at our disposal for the improvement of the land, and, he might add, if we abstained from putting into operation theories which ignored the only

really great and progressive source of wealth which India possessed, it might be safely predicted that the increase of agricultural prosperity in India would be rapid and immense: and he believed that at no distant period the twenty millions of annual income which the land now yielded to the State might be expected to form, he might really say, an insignificant burden on the agricultural resources of the country. The present measure would be a step in this direction, and, he thought, a not unimportant step. He believed that if it were worked intelligently it might produce really great results, and he thought that this measure would also be valuable at the present time as a fresh recognition of the fact that the Government of India was not only a Government, but the receiver, as the representative of the public, of that portion of the rent of the land which had belonged from time immemorial to the State, and that, in its capacity of chief landlord of the country, duties devolved on the Government for the improvement of the land, and for the advancement generally of agriculture, beyond the ordinary duties of a Government, and similar in kind to those duties which a good landlord had everywhere to perform.

The Motion was put and agreed to.

ÁBKÁRÍ BILL.

The Hon'ble Mr. Cockerell moved for leave to introduce a Bill to consolidate and amend the law relating to the Ábkárí Revenue in Northern India. He said that the law under which the Ábkárí Revenue system was administered in the Bengal Presidency was contained in Acts XXI of 1856 and XXIII of 1860.

By Acts X and XXVIII of 1864, the Government was empowered to extend the operation of the Bengal Acts to any part of the territories under the direct administration of the Governor General in Council, and to the Panjáb.

Through the combined operation of these enactments, the same law was now in force in Bengal, the North-Western Provinces, the Panjáb and the Central Provinces, and was also practically followed in Oudh, though the precise legality of its operation in that province was open to question.

In British Burma the Ábkárí administration was conducted under local rules which had been legalized by Act XXIII of 1868, and which, so far as they went, were not widely dissimilar to the provisions of the Bengal Act.

The object of the Bill which he was now asking leave to introduce was to substitute for the five Acts just mentioned one consolidated enactment, which

would have operation within the same local limits as the recently passed Prisons' Act, namely, all the territories in respect of which this Council discharged the functions of a local legislature.

It was not proposed to apply the Bill to Lower Bengal; for, although the Abkárí was a branch of imperial revenue, the details of its administration could be more conveniently dealt with by local legislation; and in fact, in the Madras Presidency, the law relating to Abkárí was contained in an Act of the local legislature.

The present law in Bengal having been enacted previously to the passing of the Indian Councils' Act of 1861, might be amended, as occasion required, by the local legislature; the effect of applying this Bill to Lower Bengal would be to deprive the Local Council of the power which it now had of making such alterations in the law as might from time to time be found necessary.

For this reason it was thought expedient to leave the present law, so far as its application to Lower Bengal was concerned, to be consolidated by the local legislature, as had been done in the Madras Presidency, and as, it was hoped, would be done at no distant date in the Bombay Presidency, where the law on this subject was at present in a very disjointed state.

The Motion was put and agreed to.

ARMS BILL.

The Hon'ble Mr. Robinson introduced the Bill to consolidate the law relating to the manufacture, importation and sale of Arms and Ammunition, and the right to keep and use the same, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that this was at present a mere measure of consolidation, and would be referred to the Local Governments and administrations for their views.

The Motion was put and agreed to.

NORTHERN INDIA CANALS AND DRAINAGE BILL.

Colonel the Hon'ble R. Strachey moved that the Hon'ble Messrs. Inglis and Robinson be added to the Select Committee on the Bill to regulate the construction and maintenance of Public Works for Irrigation, Navigation and Drainage. He intended to proceed at once with the consideration of this important Bill; he hoped that it might be disposed of before the Government of India left the Presidency.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. STEPHEN moved that the Hon'ble Mr. Strachey be added to the Select Committee on the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to consolidate the law relating to the manufacture, importation and sale of Arms and Ammunition, and the right to keep and use the same—The Hon'ble Messrs. Stephen, Chapman, Cockerell and Inglis and the Mover.

The Council adjourned to Friday, the 6th January 1871.

CALCUTTA,
The 30th December 1870.

WHITLEY STOKES,
Secy. to the Govt. of India.

Office Supdt. Govt. Printing—No 5915 L C.—3 1 71—400

INDEX

TO THE

ABSTRACT OF PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

VOL IX.

A.

Page.

ÁBKÁRÍ REVENUE *(Northern India)* Bill.
Motion for leave to introduce 500
ACQUISITION OF LAND. See *Expropriation.*
ACT No. XVIII OF 1854. See *Railways.*
„ „ XX OF 1856. See *Chaukidári.*
„ „ XIX OF 1861. See *Paper Currency.*
„ „ XIII OF 1864. See *Emigrants Registration Fee.*
„ „ VII OF 1870. See *Court Fees Act Amendment.*
„ „ XXVI OF 1870. See *Prisons.*
ACTS. See *Regulations and Acts.*
ADJOURNMENTS. See *Council.*
AGROR VALLEY BILL.
Introduced 1
Passed 4
ALLEGIANCE, oath of, by Hon'ble F. R. Cockerell 1
„ „ J. F. D. Inglis 465
„ „ D. Cowie .. .. *ib.*
„ „ W. Robinson 475

Page.

AMENDMENTS adopted 123, 189, 318, 367, 384, 385, 396, 415, 495
amended 173
carried 175
negatived 316
withdrawn 338-43

ANDAMANS. See *Commitments.*

ARMS AND AMMUNITION CONSOLIDATION BILL.
Motion for leave to introduce 496
Introduced and referred to Select Committee 501
Select Committee appointed 502

B.

BANK OF BENGAL DIRECTORS' BILL.
Motion for leave to introduce 348
Introduced 355
Passed 359

BENGAL. See *Civil Courts, Regulations.*

BRITISH SUBJECTS. See *Europeans.*

BUDDHISTS. See *Hindú Wills.*

BUDGET STATEMENTS ... . 256—67

C.

CANALS AND DRAINAGE *(Northern India)* BILL.
Introduced 29
Referred to Select Committee 72
Select Committee appointed 103
" " preliminary report presented 318
" " added to 501

CANTONMENTS. See *Military.*

CATTLE TRESPASS BILL.
Motion for leave to introduce 404
Introduced 418
Referred to Select Committee 430
Select Committee appointed ... ... *ib.*
" " added to 474, 494

CHAPMAN, HON'BLE F. S.,
Canals and Drainage *(Northern India)* Bill 96
Chaukídárí Act Extension Bill 462, 473
Commitments from Andamans Bill 462, 473, 495
Court Fees Bill 117
Elphinstone Land and Press Company, Limited, Bill ... 158, 160, 161
Emigrants Registration Fee Bill 43, 57, 72
Emigration of Native Labourers Bill 37, 493, 495

Page.

CHAPMAN, HON'BLE F. S., *(continued).*
High Courts *(Costs of Petitions)* Bill 5, 37, 52
Income Tax *(Indian)* Bill 271
Native Passenger Ships' Bill 58, 146, 158, 188, 189, 190
Presidency Small Cause Courts General Funds Bill 467, 470
Prisons Act Extension *(Coorg)* Bill 462, 473
Quarantine Rules Bill 2, 3, 4
CHAPMAN, HON'BLE F. S., appointed to Select Committee 11, 53, 103, 141, 148, 165, 190, 254, 430, 435, 463, 474, 494, 496, 502
CHAUKÍDÁRÍ ACT EXTENSION BILL.
Motion for leave to introduce 462
Introduced and referred to Select Committee 473
Select Committee appointed 474
CIVIL COURTS *(Bengal)* BILL.
Motion for leave to introduce 408
Introduced and referred to Select Committee 432
Select Committee appointed 435
" " added to 473
COCKERELL, HON'BLE F. R.,
Ábkárí Revenue *(Northern India)* Bill 500
Allegiance, oath of, ... 1
Cattle Trespass Bill 404, 418, 430, 474, 494
Civil Courts *(Bengal)* Bill 408, 432, 473
Court Fees Act Amendment Bill 348, 356, 359
Court Fees Bill 4, 61, 69, 105, 113, 123
District Munsifs' *(Madras)* Bill 346, 353, 494
European British Subjects Bill 385
Expropriation Bill 171, 173, 174, 175
Hindú Wills Bill 26, 338, 343, 367, 368
Military Cantonments Bill 53
Native Passenger Ships' Bill 189
Obsolete Enactments Bill 318
Prisoners' Bill 382, 400, 404, 418, 429
Prisons *(Panjáb, &c.)* Bill 382, 400, 412, 415, 416
Registration Bill 432, 454, 474, 494
Regulations and Acts Local Extent Bill ... 55, 147, 162, 400, 473, 494
Regulations *(Bengal)* Repeal Bill 363, 376, 430, 474
Subordinate Judges' and Munsifs' Bill 2, 4
Taluqdárs' *(Oudh)* Relief Bill 394
COCKERELL, HON'BLE F. R., appointed to Select Committee ... 11, 37, 53, 103, 141, 148, 165, 190, 254, 351, 357, 370, 378, 382, 402, 405, 430, 435, 463, 474, 494, 496, 502

CODE. See *Penal Code.*

Page.

COINAGE AND MINT BILL.
Motion for leave to introduce 360
Introduced and referred to Select Committee 361
Select Committee appointed 370
" " report presented 383
" " " considered 397

COMMANDER-IN-CHIEF. See *Mansfield.*

COMMITMENTS FROM ANDAMANS BILL.
Motion for leave to introduce 462
Introduced 473
Amendment proposed and adopted 495
Bill passed ... ... *ib.*

CONSIDERATION OF BILL postponed 383, 397

CONSOLIDATION. See *Abkári, Arms, Cattle Trespass, Civil Courts, Coroners, Customs Duties, Emigration, Land Improvement, Limitation, Marriage, Paper Currency, Prisoners, Registration, Regulations and Acts, Sea Customs.*

COORG. See *Prisons.*

CORONERS LAW CONSOLIDATION BILL.
Motion for leave to introduce 380
Introduced and referred to Select Committee 399
Select Committee appointed 402
" " preliminary report presented... 412
" " added to 435

COSTS OF PETITIONS. See *High Courts.*

COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS.
Adjournments of ... 2, 11, 37, 43, 53, 59, 103, 112, 129, 141, 148, 165, 190, 254, 343, 345, 351, 357, 360, 370, 378, 382, 390, 402, 405, 409, 411, 427, 430, 435, 463, 474, 494, 496, 502
Divisions of 175
Meetings of ... 1, 3, 13, 39, 45, 55, 61, 105, 113, 131, 143, 149, 167, 191, 269, 345, 346, 353, 359, 361, 371, 379, 383, 391, 403, 407, 411, 429, 431, 437, 465, 475, 495, 497

COURT FEES ACT AMENDMENT BILL.
Motion for leave to introduce 348
Introduced 356
Passed 359

COURT FEES BILL.
Select Committee report presented... 4
" " " considered 61
" " added to 70
" " report (second) presented 105

Page.

COURT FEES BILL *(continued)*.
Select Committee report (second) considered 113
Amendment proposed and adopted 123
Bill passed . .. . *ib.*
COWIE, HON'BLE D.,
Allegiance, oath of, ... 465
Income Tax *(Indian)* Bill 280
Paper Currency Bill . 178
Paper Currency Consolidation Bill 491
COWIE, HON'BLE D., appointed to Select Committee 141, 190, 254, 435, 494, 496
CRIMINAL PROCEDURE BILL.
Motion for leave to introduce .. 356
Introduced and referred to Select Committee .. 475
Select Committee appointed 494
" " added to 502
CRIMINAL TRIBES BILL.
Motion for leave to introduce ... 419
Introduced and referred to Select Committee 465
Select Committee appointed ... 474
CURRENCY. See *Paper Currency*.
CUSTOMS DUTIES BILL.
Motion for leave to introduce 253
Introduced and referred to Select Committee 254
Select Committee appointed ... . *ib.*
" " report presented 317
" " " considered ... . *ib.*
Bill passed 318
CUSTOMS DUTIES CONSOLIDATION BILL.
Motion for leave to introduce 403
CUSTOMS DUTIES EXEMPTION BILL.
Motion for leave to introduce 347
Introduced 355
Passed 359

D.

DEBATES IN COUNCIL.
Canals and Drainage *(Northern India)* Bill ... . 29—37, 72—103
Coinage and Mint Bill ... ... 397—99
Court Fees Act Amendment Bill ... ... 348—49
Court Fees Bill ... ... 61—70, 113—22
Elphinstone Land and Press Company, Limited, Bill ... ... 160—61
European British Subjects Bill ... . 385—87
Expropriation Bill ... ...,. 167—73, 173—75

Page.

DEBATES IN COUNCIL *(continued)*.

Female Infanticide Bill 45—52
Hindú Wills Bill 18—29, 338—48, 368—70
Income Tax *(Indian)* Bill 191—253, 270—316
Native Passenger Ships' Bill 188—89
Paper Currency Bill 178—81
Paper Currency Consolidation Bill 488—93
Presidency Small Cause Courts General Funds Bill 416—18, 467—72
Regulations and Acts' Local Extent Bill ... 55—57
Taluqdárs' *(Oudh)* Relief Bill 349—50, 391—97
Weights and Measures *(Indian)* Bill 132—40, 181—87

DIRECTORS. See *Bank of Bengal.*

DISTRICT MUNSIFS' *(Madras)* Bill.

Motion for leave to introduce 346
Introduced and referred to Select Committee 353
Select Committee appointed 357
" " added to 494

DIVISIONS. See *Council.*

DRAINAGE. See *Canals and Drainage.*

DURAND, MAJOR GENERAL THE HON'BLE SIR H. M.,

Canals and Drainage *(Northern India)* Bill 36, 89, 103
Female Infanticide Bill 49
Hindú Wills Bill 342
Income Tax *(Indian)* Bill 294
Weights and Measures *(Indian)* Bill 139, 186, 187

DUTIES. See *Customs Duties, Customs Duties Consolidation, Customs Duties Exemption.*

E.

ELLIS, HON'BLE B. H.,

Presidency Small Cause Courts General Funds Bill 417, 467

ELLIS, HON'BLE B. H., appointed to Select Committee 351, 357, 378, 382

ELPHINSTONE LAND AND PRESS COMPANY, LIMITED, BILL.

Motion for leave to introduce 158
Introduced and considered 160
Passed ... 161

EMIGRANTS' REGISTRATION FEE BILL.

Motion for leave to introduce 43
Introduced 57
Passed 72

EMIGRATION OF NATIVE LABOURERS' BILL.

Motion for leave to introduce withdrawn 37
" " " made 493
Introduced and referred to Select Committee 495
Select Committee appointed 496

Page.

ENACTMENTS. See *Obsolete Enactments.*
ESTATES. See *Taluqdárs.*
EUNUCHS. See *Criminal Tribes.*
EUROPEAN BRITISH SUBJECTS. See *Commitments*
EUROPEAN BRITISH SUBJECTS BILL.
Motion for leave to introduce 362
Introduced and referred to Select Committee 371
Select Committee appointed 378
" " report presented 379
" " " considered 384
Amendments proposed and adopted 384, 385
Bill passed *ib.*
EVIDENCE BILL.
Select Committee added to 101, 435, 473, 493
EXEMPTION. See *Customs Duties.*
EXPROPRIATION BILL.
Select Committee report presented 157
" " " considered 167
Amendment proposed 173
" " and carried 175
Bill passed 176
EXTENSION. See *Chaukídárí Act, Prisons Act.*

F.

FEE. See *Emigrants.*
FEMALE INFANTICIDE BILL.
Motion for leave to introduce 5
Introduced and referred to Select Committee 45
Select Committee appointed 53
" " report presented 131
" " " considered 145
Bill passed 146
FINANCIAL STATEMENT *(Hon'ble Sir R. Temple)* 191—253
FORBES, HON'BLE GORDON S.,
Weights and Measures *(Indian)* Bill 181
FORBES, HON'BLE GORDON S., appointed to Select Committee 11, 103, 141, 148, 165, 190, 254

G.

GENERAL FUNDS. See *Presidency Small Cause Courts.*
GOVERNMENT. See *Railways.*
GOVERNOR GENERAL (RIGHT HON'BLE EARL MAYO).
Canals and Drainage *(Northern India)* Bill .. 97
Court Fees Bill 70

Page.

GOVERNOR GENERAL (RIGHT HON'BLE EARL MAYO) *(continued)*.
Elphinstone Land and Press Company, Limited, Bill ... 161
Female Infanticide Bill ... 51
Income Tax *(Indian)* Bill ... 233, 306
Presidency Small Cause Courts General Funds Bill ... 472
Taluqdárs' *(Oudh)* Relief Bill ... 350

H.

HIGH COURTS. See *Commitments*.
HIGH COURTS *(Costs of Petitions)* BILL.
Introduced and referred to Select Committee ... 5
Select Committee appointed ... 11
" " report presented ... 37
" " " considered ... 52
Bill passed ... *ib.*
HINDÚ WILLS BILL.
Select Committee report presented ... 4
" " " considered ... 13
Bill recommitted ... 29
Select Committee report presented ... 181
" " " considered ... 319
Amendment moved and withdrawn ... 338—43
Select Committee further report considered ... 366
Amendment proposed and adopted ... 367
Bill passed ... 368

I.

INCOME TAX *(Indian)* BILL.
Motion for leave to introduce ... 191
Introduced and referred to Select Committee ... 253
Select Committee appointed ... 254
" " report presented ... 270
" " " considered ... *ib.*
Amendment proposed and negatived ... 274—316
Bill passed ... *ib.*
INDIAN. See *Income Tax, Penal Code, Registration, Weights and Measures.*
INFANTICIDE. See *Female Infanticide.*
INGLIS, HON'BLE J. F. D.,
Allegiance, oath of, ... 465
INGLIS, HON'BLE J. F. D., appointed to Select Committee 473, 474, 494, 496, 501, 502
INSOLVENCY BILL.
Motion for leave to introduce ... 387
Introduced and referred to Select Committee ... 434

Page.

INSOLVENCY BILL *(continued)*.
Select Committee appointed 435
" " added to 473, 494
IRRIGATION. See *Canals*.

J.

JAYPÚR, HIS HIGHNESS THE MAHÁRÁJÁ OF,
Appointed to Select Committee 53
JUDGES. See *Subordinate Judges*.

K.

KULLU SUB-DIVISION *(Panjáb)* BILL.
Introduced and referred to Select Committee 37
Select Committee appointed ... ... *ib.*
" " report presented... 43
" " " considered 52
Bill passed ... . *ib.*

L.

LABOURERS. See *Emigration*.
LAND AND PRESS COMPANY. See *Elphinstone*.
LAND FOR PUBLIC WORKS. See *Expropriation*.
LAND IMPROVEMENT BILL.
Motion for leave to introduce 497
LIMITATION OF SUITS BILL.
Motion for leave to introduce 431
Introduced and referred to Select Committee 465
Select Committee appointed 474
" " added to 494
LOCAL ACTS. See *European British Subjects*.
LOCAL EXTENT. See *Regulations*.
LOCAL PUBLIC WORKS BILL.
Motion for leave to introduce 161

M.

MADRAS. See *District Munsifs*.
MANSFIELD, HIS EXCELLENCY SIR WILLIAM,
Canals and Drainage (*Northern India*) Bill 87
Court Fees Bill 70
Expropriation Bill 174
Income Tax *(Indian)* Bill 223
Paper Currency Bill 178
Weights and Measures *(Indian)* Bill 140

Page.

MARRIAGE LAW CONSOLIDATION BILL.
Motion for leave to introduce ... 380
MAULMAIN. See *Timber Duties.*
MEASURES. See *Weights and Measures.*
MILITARY CANTONMENTS BILL.
Motion for leave to introduce postponed 53
MINT. See *Coinage.*
MOTIONS postponed 53, 147, 376, 382, 383, 397, 400, 432
withdrawn 37, 58, 343
MUNICIPAL FUNDS. See *Local Public Works.*
MUNSIFS. See *District Munsifs, Subordinate Judges.*

N.

NATIVE LABOURERS. See *Emigration.*
NATIVE PASSENGER SHIPS BILL.
Motion for leave to introduce 58
Introduced and referred to Select Committee 146
Select Committee appointed 148
" " report presented 158
" " " considered... 188
Amendment proposed and adopted 189
Bill passed 190
NAVIGATION. See *Canals.*
NORTHERN INDIA. See *Canals.*

O.

OATH OF ALLEGIANCE. See *Allegiance.*
OBSOLETE ENACTMENTS BILL.
Motion for leave to introduce 105
Introduced and referred to Select Committee 143
Select Committee appointed 148
" " report presented 181
" " " considered 318
Amendment proposed and adopted ... ... *ib.*
Bill passed .. .. *ib.*
OUDH. See *Taluqdárs.*

P.

PANJÁB. See *Kullu Sub-division, Prisons.*
PAPER CURRENCY BILL.
Motion for leave to introduce 149
Introduced and referred to Select Committee 176
Select Committee appointed 190
" " report presented 269

Page.

PAPER CURRENCY BILL *(continued)*.
Select Committee report considered 269
Bill passed 270
PAPER CURRENCY CONSOLIDATION BILL.
Motion for leave to introduce 407
Introduced and referred to Select Committee 488
Select Committee appointed 494
PASSENGER SHIPS. See *Native Passenger*.
PENAL CODE AMENDMENT BILL.
Motion for leave to introduce 371
Introduced and referred to Select Committee 379
Select Committee appointed 382
Select Committee report presented 383
" " " consideration postponed 397
Bill re-committed 419
Select Committee final report presented 431
" " " " considered 437
Bill passed 454
PETITIONS. See *High Courts*.
POSTPONEMENT. See *Motions*.
PRESIDENCY SMALL CAUSE COURTS GENERAL FUNDS BILL.
Motion for leave to introduce 416
Introduced 467
PRESIDENT. See *Governor General*.
PRISONERS' BILL.
Motion for leave to introduce postponed 382
" " " 400
" " made 404
Introduced 418
Referred to Select Committee 429
Select Committee appointed 430
PRISONS *(Panjáb, &c.)* BILL.
Introduced and referred to Select Committee 71
Select Committee appointed 103
" " added to 382
" " report presented 400
" " " considered ... ... ~~412~~
Amendment proposed and adopted 415
Bill passed 416
PRISONS ACT EXTENSION *(Coorg)* BILL.
Motion for leave to introduce 462
Introduced 473
PROCEDURE. See *Criminal Procedure*.

Page.

Q.

QUARANTINE RULES BILL.
Select Committee report presented... 2
" " " considered 3
Bill passed 4

R.

RAILWAYS *(Government)* BILL.
Motion for leave to introduce 164
Introduced 190
Considered ... ... *ib.*
Passed ... ... *ib.*
REGISTRATION FEE. See *Emigrants.*
REGISTRATION LAW CONSOLIDATION BILL.
Motion for leave to introduce 380
Introduction postponed 432
Introduced and referred to Select Committee 454
Select Committee appointed 463
" " added to 474, 494
REGULATIONS AND ACTS LOCAL EXTENT BILL.
Motion for leave to introduce 55
Introduction postponed 147
Introduced and referred to Select Committee 162
Select Committee appointed 165
" " added to 400, 473, 494
REGULATIONS *(Bengal)* REPEAL BILL.
Motion for leave to introduce 363
Introduced and referred to Select Committee 376
Select Committee appointed 378
" " added to 430, 474
ROBINSON, HON'BLE W.,
Allegiance, oath of, ... 475
Arms Bill 496, 501
ROBINSON, HON'BLE W., appointed to Select Committee ...493, 494, 496, 501, 502
RULES. See *Quarantine.*
RULES for the Conduct of Business, suspension of, . 131, 160, 176, 190, 253, 269, 270, 317

S.

SEA CUSTOMS CONSOLIDATION BILL.
Motion for leave to introduce 381
SELECT COMMITTEE, additions to, 70, 382, 400, 401, 430, 435, 473, 474, 493, 494, 501, 502
" " postponement of presentation of report of, ... 376

Page.

SELECT COMMITTEE, postponement of consideration of report of, ... 383, 397
" " reconstitution of, ... 29, 419

" " ... ...

	Appointed.	Report presented.	Report considered.
Arms and Ammunition Consolidation Bill	502	...	...
Canals and Drainage *(Northern India)* Bill	103	318	...
Cattle Trespass Bill	430	...	...
Chaukídárí Act Extension Bill	474	...	...
Civil Courts *(Bengal)* Bill	435	...	...
Coinage and Mint Bill	370	383	397
Coroners' Law Consolidation Bill	402	412	...
Court Fees Bill	...	4	61
	...	105	113
Criminal Procedure Bill	494	...	..
Criminal Tribes Bill	474	...	...
Customs Duties Bill	254	317	317
District Munsifs' *(Madras)* Bill	357	...	...
Emigration of Native Labourers' Bill	496	...	...
European British Subjects Bill	378	379	384
Expropriation Bill	...	157	167
Female Infanticide Bill	53	131	145
High Courts *(Costs of Petitions)* Bill	11	37	52
Hindú Wills Bill	...	4	13
" " " *(recommitted)*	29	181	319,366
Income Tax *(Indian)* Bill	254	270	270
Insolvency Bill	435	...	...
Kullu Sub-division *(Panjáb)* Bill	37	43	52
Limitation of Suits Bill	474	...	...
Native Passenger Ships' Bill	148	158	188
Obsolete Enactments Bill	148	181	318
Paper Currency Bill	190	269	269
Paper Currency Consolidation Bill	494	...	...
Penal Code Amendment Bill	382	383	...
" " " " *(recommitted)*	419	431	437
Prisoners' Bill	430	...	...
Prisons Bill	103	400	412
Quarantine Rules Bill	...	2	3
Registration Law Consolidation Bill	463	...	...
Regulations and Acts Local Extent Bill	165	...	...
Regulations *(Bengal)* Repeal Bill	378	...	...
Subordinate Judges' and Munsifs' Bill	..	2	4
Taluqdárs' *(Oudh)* Relief Bill	351	379	391
Timber Duties *(Maulmain)* Bill	405	407	411
Weights and Measures Bill	141	165	181

SMALL CAUSE COURTS. See *Presidency.*

SMITH, HON'BLE J. R. BULLEN,
Income Tax *(Indian)* Bill 274, 316

Page.

SMITH, HON'BLE J. R. BULLEN, *(continued)*.
Paper Currency Consolidation Bill 489
Presidency Small Cause Courts General Funds Bill 470
Weights and Measures *(Indian)* Bill .. 138
SMITH, HON'BLE J. R. BULLEN, appointed to Select Committee, 111, 190, 254, 435, 463, 474, 494
STEPHEN, HON'BLE J. F.,
Agror Valley Bill .. 1, 4
Coinage and Mint Bill . 360, 361, 383, 397
Coroners' Law Consolidation Bill 380, 399, 412, 435
Court Fees Act Amendment Bill 349
Court Fees Bill 70, 120
Criminal Procedure Bill 356, 475, 502
Criminal Tribes Bill 419, 465
Elphinstone Land and Press Company, Limited, Bill . 160
European British Subjects Bill 362, 371, 379, 384, 385, 386
Evidence Bill 401, 435, 473, 493
Expropriation Bill 169, 174
Hindú Wills Bill 4, 13, 29, 181, 319, 366, 367, 368
Income Tax *(Indian)* Bill 281
Insolvency Bill 387, 434, 473, 494
Kullu Sub-division Bill 37, 43, 52
Limitation of Suits Bill 431, 465, 494
Marriage Law Consolidation Bill 380
Obsolete Enactments Bill 105, 143, 181, 318
Penal Code Amendment Bill 371, 379, 383, 397, 419, 431, 437, 454
Presidency Small Cause Courts General Funds Bill 416, 468
Prisons *(Panjáb, &c.)* Bill 71
Registration Law Consolidation Bill ... 380
Regulations and Acts Local Extent Bill 57
Regulations *(Bengal)* Repeal Bill 366
Taluqdárs *(Oudh)* Relief Bill 350, 395
Timber Duties *(Maulmain)* Bill 400, 403, 407, 411, 412
Weights and Measures *(Indian)* Bill 140
STEPHEN, HON'BLE J. F., appointed to Select Committee, 11, 37, 53, 103, 141, 148, 165, 190, 254, 351, 357, 370, 378, 382, 402, 405, 430, 435, 463, 474, 494, 496, 502
STRACHEY, HON'BLE J.,
Courts Fees Bill 121
Expropriation Bill 157, 167, 175, 176
Female Infanticide Bill 5, 45, 131, 145, 146
Hindú Wills Bill 342, 368
Income Tax *(Indian)* Bill 282
Land Improvement Bill 497
Taluqdárs *(Oudh)* Relief Bill 39, 349, 376, 379, 383, 391, 396, 397
Weights and Measures *(Indian)* Bill 135

Page.

STRACHEY, HON'BLE J., appointed to Select Committee, 53, 103, 141, 351, 370, 382, 400, 401, 430, 463, 502

STRACHEY, COLONEL, THE HON'BLE R.,
- Canals and Drainage *(Northern India)* Bill 29, 72, 100, 318, 501
- Expropriation Bill 173
- Railways *(Government)* Bill . . 164, 190
- Local Public Works Bill 161
- Weights and Measures *(Indian)* Bill 58, 123, 131, 132, 138, 140, 165, 181, 182, 187, 188

STRACHEY, COLONEL, THE HON'BLE R., appointed to Select Committee 103, 132, 141

SUBORDINATE JUDGES' AND MUNSIFS' BILL.
- Select Committee report presented 2
- " " " considered 4
- Bill passed *ib.*

SUITS. See *Limitation.*

T.

TALUQDÁRS *(Oudh)* RELIEF BILL.
- Motion for leave to introduce 39
- Introduced and referred to Select Committee 349
- Select Committee appointed 351
- " " report presentation postponed 376
- " " " presented 379
- " " " consideration postponed 383
- " " " considered 391
- Amendment proposed and adopted 396
- Bill passed 397

TARIFF. See *Customs Duties.*

TAYLOR, HON'BLE G. N.,
- Courts Fees Bill ... 69

TEMPLE, HON'BLE SIR RICHARD,
- Bank of Bengal Directors Bill 348, 355, 359
- Coinage and Mint Bill 399
- Court Fees Bill 69, 70, 118, 123
- Customs Duties Bill 253, 254, 317, 318
- Customs Duties Consolidation Bill 403
- Customs Duties Exemption Bill .. 347, 355, 359
- Elphinstone Land and Press Company, Limited, Bill 161
- Expropriation Bill . . 175
- Hindú Wills Bill 342
- Income Tax *(Indian)* Bill 191, 253, 270, 297, 316
- Paper Currency Bill 149, 176, 178, 269, 270
- Paper Currency Consolidation Bill 407, 488, 491
- Presidency Small Cause Courts General Funds Bill 416, 418, 467, 471

Page.

TEMPLE, HON'BLE SIR RICHARD, *(continued)*.
Sea Customs Consolidation Bill 381
Weights and Measures *(Indian)* Bill 137
TEMPLE, HON'BLE SIR R., appointed to Select Committee 70, 103, 190, 254, 370, 494
TIMBER DUTIES *(Maulmain)* BILL.
Motion for leave to introduce 400
Introduced and referred to Select Committee 403
Select Committee appointed 405
" " report presented 407
" " " considered 411
Bill passed 412

W.

WEIGHTS AND MEASURES *(Indian)* BILL.
Motion for leave to introduce withdrawn 58
" " " " made 123
Introduced and referred to Select Committee 132
Select Committee appointed 141
" " report presented 165
" " " considered 181
Bill passed 188
WILLS. See *Hindú Wills.*
WORKS OF PUBLIC UTILITY. See *Expropriation, Local Public Works.*